

**AGREEMENT BETWEEN
THE CENTRAL CONTRA COSTA SOLID WASTE AUTHORITY AND
Julie Coleman Enterprises, Inc. dba Pacific Rim Recycling**

**FOR
RECYCLING SERVICES**

FINAL VERSION

MARCH 1, 2005

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AGREEMENT FOR RECYCLABLES DIVERSION SERVICES

This Agreement is entered into and executed as of this 1st day of March 2005, by and between the Central Contra Costa Solid Waste Authority (“CCCSWA”) a joint powers authority, and Julie Coleman Enterprises, Inc. dba Pacific Rim Recycling, (“Contractor”), a California Corporation.

RECITALS

WHEREAS, the State of California (“State”) through enactment of the California Integrated Waste Management Act of 1989, has directed all local agencies to promote recycling and to maximize the use of feasible source reduction, recycling and composting options in order to reduce the amount of municipal solid waste that must be disposed of by landfill; and

WHEREAS, CCCSWA’s Member Agencies require a materials recovery Facility to serve as a point to Accept, Process, Recover, and Divert Recyclable Materials, Market the Recovered Materials and Transfer the Residue to Designated Disposal Facilities for Disposal; and

WHEREAS, Contractor currently operates a materials recovery Facility in Benicia, California and is intending to construct improvements to the Facility in order to enhance Contractor’s ability to Accept, Process, Recover, Divert, Market, and Transfer Recyclable Materials; and

WHEREAS, CCCSWA desires to deliver Recyclable Materials from portions of its Member Agencies consisting of Walnut Creek, Town of Danville, and the unincorporated central Contra Costa County area to the Contractor’s materials recovery Facility in Benicia; and

WHEREAS, CCCSWA has determined that, in the event Contractor satisfies the terms and conditions of this Agreement, it is in the best interest of CCCSWA and its residents, taking into account the qualifications and experience of Contractor, and the cost of providing such services, for CCCSWA to ensure the Delivery of a minimum amount of Recyclable Materials to such Facility.

NOW, THEREFORE, in consideration of the mutual promises, covenants, guaranties and conditions contained in this Agreement and for other goods and valuable consideration, CCCSWA and Contractor agree as follows:

ARTICLE 1. DEFINITIONS

Unless a term is otherwise defined in this Agreement, definitions of terms used in this Agreement will be the same as those found in Division 30, commencing with Section 40000, Part 1 Chapter 2 of the California Public Resources Code.

Accept (or **Acceptance** or other variations thereof) is the transfer of Ownership of materials to Contractor from the Person Delivering the materials, as provided in Section 8.05. Materials will be deemed Accepted unless Contractor rejects the materials within the same calendar day of receipt.

Act means the California Integrated Waste Management Act of 1989 (Division 30, commencing with Section 40000 of the California Public Resources Code), as amended, supplemented, superseded and replaced from time to time.

Agreement means this Agreement, including all Exhibits and attachments that are incorporated herein by reference. This Agreement may be amended and supplemented pursuant to Section 17.05.

Applicable Law means all statutes, rules, regulations, Permits, orders, or requirements of the United States, State, County, CCCSWA and local government authorities and agencies having applicable jurisdiction, that apply to or govern the Facility, the Site or the performance of the Parties' respective Obligations hereunder in effect as of the Execution Date and as amended and/or enacted hereinafter.

Approved Users are public or private collection companies that collect residential Commingled Recyclable Materials and Deliver same to the Facility. As of the Execution Date of this Agreement, Approved Users are CCCSWA and CCCSWA's Collector.

Base Term means the ten (10) year period commencing March 1, 2005 through February 28, 2015.

CCCSWA means the Central Contra Costa Solid Waste Authority or its designated representative.

CCCSWA's Collector (or Collector) means USA Waste of California, dba Valley Waste Management.

CCCSWA's Obligations means each and every obligation and liability of CCCSWA specified in this Agreement.

CEQA means the California Environmental Quality Act, Section 21000 *et seq.* of the California Public Resources Code and its implementing regulations and guidelines, including future amendments to or recodification thereof.

Change in Law means the occurrence of any event or change in Applicable Law as follows:

(1) the adoption, promulgation, amendment, modification, rescission, revision or revocation of any Applicable Law or change in judicial or administrative interpretation thereof occurring after the Execution Date hereof; or

(2) any order or judgment of any Federal, State or local court, administrative agency or governmental body issued after the Execution Date hereof if:

(i) such order or judgment is not also the result of the willful misconduct or negligent action or inaction of the Party relying thereon or of any third party for whom the Party relying thereon is directly responsible; and

(ii) the Party relying thereon, unless excused in writing from so doing by the other Party, shall make or have made, or shall cause or have caused to be made, Reasonable Business Efforts in good faith to contest such order or judgment (it being understood that the contesting in good faith of such an order or judgment shall not constitute or be construed as a willful misconduct or negligent action of such Party); or

(3) the imposition by a governmental authority or agency of any new or different material conditions in connection with the issuance, renewal, or modification of any Permit after the Execution Date; or

(4) the failure of a governmental authority or agency to issue, or the suspension or termination of, any Permit after the Execution Date hereof: or

(5) Any changes reducing the State of California redemption values for beverage and food containers after the Execution Date of this Agreement.

Change in Scope means the change in Facility Enhancement or Operation directed by CCCSWA or requested by Contractor, and approved by CCCSWA, in accordance with Article 11.

Commingled Recyclable Materials (also referred to as single stream recyclables) or materials means mixed Recyclable Materials, primarily fiber and containers, which are primarily residential, source separated Recyclable Materials.

Contract Year means from March of one year to February 28 or 29 of another.

Contractor means Julie Coleman Enterprises, Inc., dba Pacific Rim Recycling, a California Corporation.

Contractor Default means Contractor's failure to meet one or more of Contractor's Obligations as defined in Article 13.

Contractor's Proposal means the proposal to provide Recycling services, submitted to CCCSWA by Contractor including any additions, deletions and/or modifications agreed to by the Parties prior to the Execution Date of this Agreement.

Contractor's Obligations means each and every obligation and liability of Contractor specified within this Agreement.

Delivery (Deliver or Delivered or other variations thereof) means arrival of Recyclable Materials at the Site entrance during Facility Receiving Hours for the purposes of Acceptance.

Design Throughput Guarantee means the minimum of 15 tons per hour of Recyclable Materials that Contractor guarantees the Facility is capable of Accepting, Processing, Recovering, Diverting and Transferring to the Designated Disposal Facility in accordance with the Performance Test requirements as defined in Section 7.09.

Designated Disposal Facility means the Facility to be used by Contractor for Disposal of Residue and such Facility shall be designated by the Contractor in accordance with Article 9.

Disposal means depositing of Residue at the Designated Disposal Facility.

Divert (or **Diversión**) means to prevent Recyclable Materials from Disposal at landfill or transformation facilities (including facilities using incineration, pyrolysis, distillation, gasification or biological conversion methods) through Recycling as provided in the Act, as such Act may be hereafter amended or superseded. Diversión is a broad concept that is to be inclusive of material handling and Processing changes that may occur over the Term including, but not limited to, changes in Standard Industry Practice or implementation of innovative (but not necessarily fully proven) techniques or technology that reduce Disposal risk, decrease costs and/or are for other reasons deemed desirable by CCCSWA.

Effective Date means March 1, 2005, the date on or after which Recyclable Materials may be Delivered during Facility Operations.

Execution (or **Execute** or other variations of) means the authorizing of the Agreement when the final signature is provided to this Agreement.

Execution Date means the date the final signatures are provided to the Agreement by the Parties.

Exhibit(s) means any or all of the attachments to this Agreement as of the Execution Date or as amended or added at any time during the Term.

Existing Users means the Cities of Benicia and Clayton.

Extension (or **Extend**) means to cause the end date of this Agreement to be beyond the tenth (10) anniversary of the commencement date of the Base Term through an amendment of this Agreement as provided for in Section 4.02.

Extraordinary Review means a review of Contractor's Obligations and costs for purposes of adjustment conducted in accordance with the provisions of Article 11 of this Agreement.

Facility means the Pacific Rim Recycling Facility located at 3690 Sprig Drive, Benicia, California 94510 which shall fulfill Contractor's Obligations hereunder including, but not limited to, all land, improvements, utility interconnections, the scale house, materials Recovery and Processing areas, and Visitors Education Center, together with administrative offices and ancillary support facilities, furnishings and equipment, and any and all other physical structures and improvements to the Site as described in Exhibit 4.

Facility Enhancement means all activities detailed in Article 7 and conducted by Contractor prior to Facility Operations Commencement Date including, but not limited to, Site design, Permitting, equipment procurement, construction and installation, and Performance Testing.

Facility Operation(s) means all Contractor's Obligations specified in this Agreement that shall commence on March 1, 2005 except as otherwise provided in this Agreement and shall include, but not be limited to, Operation and Maintenance of the Facility in accordance with the provisions hereof and Applicable Law, together with Acceptance of Permitted Material for Recovery, Processing, Transferring Residue for Disposal, Marketing, transporting Recovered Materials to Market, and procuring and maintaining insurance and bonds.

Facility Operations Commencement Date means the date the Contractor commences Facility Operations which shall be March 1, 2005 unless otherwise provided for in this Agreement.

Facility Operating Guarantee means the ongoing ability of Contractor to meet the Design and Operating Throughput Guarantees and Vehicle Turnaround Guarantee during the Term as specified in Section 8.03.

Facility Receiving Hours are hours when Contractor must Accept Recyclable Materials from Approved Users at the Facility as defined in Section 8.04(a).

Financial Guaranty Agreement is the Agreement attached as Exhibit 6 – Personal Guarantee executed by a Person other than the Contractor guaranteeing the timely and full performance of Contractor's Obligations.

Force Majeure events include but are not limited to floods, earthquakes, other extraordinary acts of nature, war or insurrection, riots, or other similar catastrophic events, not caused or maintained by the Party seeking relief which event is not reasonably within the ability of that Party to intervene in or control to the extent that such event has a material adverse effect on the ability of that Party to perform its obligations. No event, the effects of which could have been prevented by reasonable precautions, including compliance with Applicable Laws and Standard Industry Practices shall be a Force Majeure. No failure of performance by any subcontractor of Contractor or CCCSWA Collector shall be a Force Majeure event unless such failure is itself caused by a Force Majeure event as to the subcontractor or Collector.

Guarantor means Julie Coleman Enterprises, Inc. dba Pacific Rim Recycling, a California Corporation.

Hazardous Waste means materials that are hazardous, including:

(1) "Hazardous Waste" pursuant to Section 40141 of the California Public Resources Code; all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by Sections 25110.02, 25115, and 25117 of the California Health and Safety Code (the California Hazardous Waste Control Act), California Health and Safety Code Section 25100 *et seq.*, and future amendments to or recodification of such statutes or regulations promulgated thereunder, including 23 California Code of Regulations Sections 2521 and 2522; and

(2) materials regulated under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended (including, but not limited to, amendments thereto made by the Solid Waste Disposal Act Amendments of 1980), and related Federal, State and local laws and regulations;

(3) materials regulated under the Toxic Substance Control Act, 15 U.S.C. Section 2601 et seq., as amended, and related Federal, State of California, and local laws and regulations, including the California Toxic Substances Account Act, California Health and Safety Code Section 25300 et seq.;

(4) materials regulated under the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC 9601, et seq., as amended, and regulations promulgated thereunder; and

(5) materials regulated under any future additional or substitute Federal, State or local laws and regulations pertaining to the identification, transportation, treatment, storage or Disposal of toxic substances or Hazardous Waste; with the exception that Hazardous Waste, for the purpose of this Agreement, shall specifically exclude Household Hazardous Waste.

If two or more governmental agencies having concurrent or overlapping jurisdiction over Hazardous Waste adopt conflicting definitions of “Hazardous Waste”, for purposes of collection, transportation, Processing and/or Disposal, the more restrictive definition shall be employed for purposes of this Agreement.

Holidays are defined as New Year’s Day and Christmas Day or any day that CCCSWA’s Collector shall not operate.

Household Hazardous Waste are those wastes resulting from products used by the general public for household purposes which, because of their quantity, concentration, or physical or chemical characteristics, may pose a substantial known or potential hazard to human health or the environment when improperly treated, Disposed, or otherwise managed.

Labor Action means labor unrest, including strike, work stoppage, slowdown, sick-out, picketing and any other concerted job action.

Marketing (or **Market** or other variations thereof) means all Obligations of Contractor hereunder with respect to selling or giving away Recovered Materials, including Market promotion, storage, insurance, packaging, transportation, sales, weighing, and maintaining records with respect thereto.

Member Agencies means the Cities and Towns of Danville, Lafayette, Moraga, Orinda, Walnut Creek, and Contra Costa County.

Notice (or **Notify** or other variation thereof) means written Notice given by one Party to the other Party in relation to the execution of the various Obligations of both Parties under this Agreement.

Operating Throughput Guarantee means the minimum daily Tonnage of Recyclable Materials from CCCSWA Service Area that Contractor agrees to Accept, Recover, Process, Divert, and Market at the Facility per day coupled with a daily minimum tonnage Contractor agrees to Accept.

Operation (or **Operate** or **Operating** or other variation thereof) means all activities and responsibilities of Contractor specified in Article 8 of this Agreement.

Operations and Maintenance Manual is a document created by Contractor detailing all procedures associated with Facility Operations as described in Section 7.11.

Other Users means entities that Deliver Recyclable Materials to the Facility other than Approved and Existing Users, including all deliveries of non-residential and/or non-Commingled Recyclable Materials

Ownership (or **Own** or other variations thereof) means Ownership as defined in the constructive Ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date herein, and Section 318(a)(5)(C) shall be disregarded. For purposes of determining Ownership under this paragraph and constructive or indirect Ownership under Section 318(a), Ownership interest of less than ten (10) percent shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest of value which the Ownership interest represents, whichever is greater.

Party and **Parties** refers to CCCSWA and Contractor, individually and together.

Performance Test(ing) means the various tests of Facility capacity and reliability that Contractor must conduct and complete as specified in Article 7 to demonstrate the Facility's capabilities and compliance with the Performance Test Guarantee.

Performance Test Guarantee includes the following:

- (1) Design Throughput Guarantee; and
- (2) Operating Throughput Guarantee; and
- (3) Vehicle Turnaround Guarantee.

Permits means all Federal, State and local, statutory or regulatory approvals, or other measures or mechanisms necessary for Contractor to be in full legal compliance in the performance of all Contractor's Obligations, as renewed or amended from time to time.

Permitted Materials means Recyclable Material Acceptable for Processing at the Facility as set forth in Exhibit 2, and specifically excludes Unpermitted Materials.

Person includes any individual, firm, association, organization, partnership, corporation, trust, joint venture, the United States, the State, a county, a municipality or special district or any other entity whatsoever.

Process (or **Processing** or any other variation thereof) means baling, crushing, shredding, chipping, grinding, extracting, mechanical or hand classification, and any other method of handling Recyclable Materials by Contractor at the Facility after Acceptance and before Marketing of Recyclable Materials thereof.

Reasonable Business Efforts means those efforts a reasonably prudent business Person would expend under the same or similar circumstances in the exercise of such Person's business judgment, intending in good faith to take steps calculated to satisfy the Obligation that such Person has undertaken to satisfy.

Recovered Materials means Recyclable Materials Processed at the Facility from Permitted Materials.

Recovery (or **Recover**, **Recovered** or other variations thereof) means the picking, pulling, sorting, separating, classifying and recovery of Recyclable Materials from Permitted Material, whether by manual or mechanical means, by Contractor at the Facility, after Acceptance of Recyclable Materials and before Marketing of materials Accepted by Contractor.

Recyclable Materials means materials having a potential for reuse or reprocessing or other materials having value and includes Source Separated Recyclable Material, including Commingled Recyclable Materials, as listed in Exhibit 2. Recyclable Materials are Accepted at this Facility under its Permits and Applicable Law.

Recycling means the Accepting, Processing, Recovery, Diverting, and Marketing activities needed to reprocess materials.

Replacement Operator is a third party designated by CCCSWA to Operate the Facility in the event of Contractor breach or default or due to an Uncontrollable Circumstance as described in Section 13.03.

Residue means material remaining after Acceptance, Recovery, and Processing thereof that require Disposal. Residue does not include Recovered Materials.

Scheduled Facility Downtime means the time (measured in days or hours) that the Facility is closed in accordance with the schedule provided by Contractor to CCCSWA as part of Contractor's updated Operations and Maintenance Manual.

Service Area means CCCSWA's jurisdiction.

Site means the parcel(s) of land on which the Facility is situated.

Source Separated Recyclable Materials means materials set out by generators separate from their garbage and intended for Recycling.

Standard Industry Practice(s) means reasonable diligence and prudence on part of Contractor in employing, at a minimum, the then-current development, Operations, management, and business practices and standards of the California solid waste and Recycling management industry in meeting Contractor's Obligations.

State means the State of California.

Term of this Agreement means the Base Term and any Extensions granted beyond the Base Term in accordance with provisions of Article 4.

Ton means a unit of measure for weight equivalent to two thousand (2,000) standard pounds (where each pound contains 16 ounces).

Transfer (or **Transferring** or other variations thereof) means loading Residue at the Facility, transporting Residue or other materials to the Designated Disposal Facility for the purposes of unloading the transported materials at the Designated Disposal Facility in an area directed by the Contractor for the purpose of Disposal, as provided in Articles 8 and 9.

Uncontrollable Circumstance means any act, event or condition outside either Party's control and not the result of willful or negligent action or inaction on the part of such Party, whether affecting the Facility or either Party, which materially and adversely affects the ability of either Party to perform any of its Obligations as further defined in Section 13.09.

Unpermitted Materials mean wastes or other materials that the Facility may not receive under its Permits, including:

(1) Solid Waste, excepting Source Separated Recyclable Materials, Residue not exceeding 10% of the total Tons of Materials Delivered and used oil Delivered in accordance with Applicable Law; and

(2) asbestos, including friable materials that can be crumbled with pressure and are therefore likely to emit fibers, being a naturally occurring family of carcinogenic fibrous mineral substances, which may be a Hazardous Waste if it contains more than one percent (1%) asbestos; and

(3) ash residue from the incineration of solid wastes, including municipal waste, infectious waste described in item (8) below, wood waste, sludge, and agricultural wastes; and

(4) auto shredder "fluff" consisting of upholstery, paint, plastics, and other non-metallic substances that remains after the shredding of automobiles;

(5) any dead animals; and

(6) Hazardous Wastes; and

(7) industrial solid or semi-solid wastes that pose a danger to the Operation of the Facility, including cement kiln dust, or Process Residues; and

(8) infectious wastes that have disease transmission potential and are classified as Hazardous Wastes by the State Department Health Services, including pathological and surgical wastes, medical clinic wastes, wastes from biological laboratories, syringes, needles, blades, tubing, bottles, drugs, patient care items such as linen, personal or food service items from contaminated areas, chemicals, personal hygiene wastes, and carcasses used for medical purposes or with known infectious diseases; and

(9) liquid wastes that are not spadeable, usually containing less than fifty percent (50%) solids, including cannery and food processing wastes, landfill leachate and gas condensate, boiler

blowdown water, grease trap pumpings, oil and geothermal field wastes, septic tank pumpings, rendering plant byproducts, sewage sludge, and those liquid wastes that may be Hazardous Wastes;

(10) radioactive wastes under Chapter 7.6 (commencing with Section 25800) of Division 20 of the State Health and Safety Code, and any waste that contains a radioactive material, the storage or disposal of which is subject to any other State or Federal regulation and/or; and

(11) sewage sludge comprised of human (not industrial) residue, excluding grit or screenings, removed from a wastewater treatment Facility or septic tank, whether in a dry or semi-dry form.

The Parties shall during the Term promptly amend this definition of “Unpermitted Material” to reflect any applicable changes in Permits or Applicable Law.

Vehicle Turnaround Guarantee means a guarantee to Operate Facility in such a manner that CCCSWA’s Collector is able to Deliver to and unload Recyclable Materials at the Facility in a timely manner as defined in Sections 7.09 and 8.03.

Visitors Education Facility is a designated area at the Facility where a group of thirty-five (35) visitors can convene to learn about and view Facility Operations.

Working Days mean days during which CCCSWA Collector is collecting Recyclable Materials in the CCCSWA Service Area.

ARTICLE 2. REPRESENTATIONS AND WARRANTIES

2.01 Of Contractor. Contractor represents and warrants as of the date hereof:

a. Status. Contractor is a corporation duly organized, validly existing and in good standing under the laws of California, and is qualified to do business in the State.

b. Authority and Authorization. Contractor has full legal right, power and authority to Execute and deliver this Agreement and perform Contractor's Obligations hereunder. This Agreement has been duly Executed and delivered by Contractor and constitutes a legal, valid and binding Obligation of Contractor enforceable against Contractor in accordance with its terms.

c. Verification of Statements and Information in Proposal. Contractor's Proposal (Exhibit 1), on which CCCSWA has relied upon in entering into this Agreement, is correct and complete in all material respects at the time originally submitted to CCCSWA and as amended by subsequent negotiation and this Agreement.

d. No Conflicts. The Execution or delivery by Contractor of this Agreement, the performance by Contractor of Contractor's Obligations, and the fulfillment by Contractor of the terms and conditions of this Agreement does not knowingly: (1) conflict with, violate or result in a breach of any Applicable Law; or (2) conflict with, violate or result in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument to which Contractor is a Party or by which Contractor or any of its properties or assets are bound, or constitutes a Default thereunder; or (3) result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the Contractor, other than as specifically permitted hereunder.

e. No Approvals. Contractor warrants that all licenses, Permits, qualifications and approvals of whatsoever nature which will be secured are legally required for Contractor to provide services hereunder and meet Contractor's Obligations, and Contractor further warrants that it shall, at its sole cost and expense, keep in effect or obtain at all times during the Term all licenses, Permits, and approvals which are legally required for Contractor to provide such services and meet Contractor's Obligations. The Parties to this Agreement understand that the scope of this Agreement is to be carried out at a Facility Operated by the Contractor for 15 years and the results of this Agreement are a volume increase to the business it already performs at the Site.

f. No Litigation. There is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality pending or, to the best of Contractor's knowledge, threatened, against Contractor wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by Contractor of Contractor's Obligations hereunder or in connection with the transactions contemplated hereby, or which, in any way, would adversely affect the validity of, or the ability to enforce this Agreement or any other agreement or instrument entered into by Contractor in connection with the transactions contemplated hereby.

g. Patents, Trademarks, Licenses. The Contractor shall hold or possess a right to use all proprietary property including patents, rights to patents, trademarks, copyrights, and licenses, as the case may be of any equipment or software necessary for the performance by the Contractor of

Contractor's Obligations and the transactions contemplated by this Agreement. As of the date hereof, Contractor represents that it does not know any material conflict with the rights of other Persons regarding proprietary property. Contractor acknowledges and agrees that such representation is material.

h. Contractor Investigation. Contractor has made an independent investigation to its satisfaction of matters, conditions and circumstances relating to its Execution and delivery of this Agreement and Contractor's Obligations hereunder, including the nature and amount of the Recyclable Materials generated within the portion of the Service Area and the Recycling and source reduction programs now in effect or currently planned to be put into effect by CCCSWA.

2.02 Of CCCSWA. CCCSWA represents and warrants as of the date hereof:

a. Status. CCCSWA is a Joint Powers Authority, duly organized and validly existing under the Constitution and laws of the State.

b. Authority and Authorization. CCCSWA has full legal right, power and authority to Execute and deliver this Agreement, and perform CCCSWA's Obligations hereunder. This Agreement has been duly Executed and delivered by CCCSWA and upon Execution constitutes a legal, valid and binding Obligation of CCCSWA enforceable against CCCSWA in accordance with its terms. CCCSWA has complied with Applicable Law in entering into this Agreement.

c. No Warranty. CCCSWA expressly disclaims any warranties, either express or implied, as to the composition of Recyclable Material Delivered to the Contractor's Facility. However the economics related to the performance of this Agreement are dependent on the composition of the Recyclable Material Delivered to the Contractor. The Contractor shall therefore have the right to reject any material that cannot be reasonably Processed in the manner contemplated by this Agreement.

d. No Conflicts. Neither the Execution or delivery by CCCSWA of this Agreement, the performance by CCCSWA of CCCSWA's Obligations hereunder, nor the fulfillment by CCCSWA of the terms and conditions hereof: (1) conflicts with, violates or results in a breach of Applicable Law; or (2) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument to which CCCSWA is a Party or by which CCCSWA or any of its properties or assets are bound, or constitutes a Default thereunder.

e. No Approvals. No approval, authorization, license, Permit, order or consent of, or declaration, registration or filing with any governmental or administrative authority, commission, board, agency or instrumentality is required for the valid Execution and delivery of this Agreement by CCCSWA, except such as have been duly obtained from CCCSWA Board.

f. No Litigation. There is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality pending or, to the best of CCCSWA's knowledge, threatened, against CCCSWA wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by CCCSWA of its Obligations hereunder or in connection with the transactions contemplated hereby, or which, in any way, would adversely affect the validity of, or the ability to

enforce this Agreement or any other agreement or instrument entered into by CCCSWA in connection with the transactions contemplated hereby.

g. Public Works. The services provided by Contractor under this Agreement do not constitute a “public work” and are not subject to any of the provisions of the Public Works law, Labor Code Sections 1720-1901, nor of the regulations promulgated thereunder.

ARTICLE 3. THE PARTIES

3.01 Contractor Is Independent Contractor. The Parties intend that Contractor shall perform Contractor's Obligations as an independent contractor engaged by CCCSWA and neither as an officer or employee of CCCSWA nor as a partner of or joint venturer with CCCSWA. No agents, employees, contractors, subcontractors, consultants, licensees or invitees of Contractor shall be deemed to be an employee or agent of CCCSWA.

Contractor shall have the exclusive control over, and sole responsibility for the manner and means of performing Facility Operations, except as otherwise provided in this Agreement. Neither Contractor nor its officers, employees, subcontractors and agents shall obtain any rights to retirement benefits, workers compensation benefits, or any other benefits that accrue to CCCSWA employees. Such Persons shall be entirely and exclusively under the direction, supervision, and control of Contractor.

All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging or any other terms of employment or requirements of Applicable Law, shall be determined by Contractor. Except as CCCSWA may specify in writing, Contractor and Contractor's personnel shall have no authority, express or implied, to act on behalf of CCCSWA in any capacity whatsoever as an agent. Contractor and Contractor's personnel shall have no authority, express or implied, to bind CCCSWA to any obligation whatsoever.

Contractor shall issue W-2 or 1099 Forms for income and employment tax purposes for all such Persons. Contractor shall be solely responsible for and pay all manufacturers' taxes, sales taxes, use taxes, processing taxes, and all federal and state taxes, insurance and contributions for social security and unemployment which are measured by wages, salaries or any remuneration paid to Contractor's employees, whether levied under existing or subsequently enacted laws, rules or regulations. The Contractor shall also pay all property tax assessments on real property and equipment at the Site.

3.02 Parties in Interest. Nothing in this Agreement, whether express or implied, is intended to confer any rights on any Persons other than the Parties and their representatives, successors and permitted assigns.

3.03 Binding on Successors. The provisions of this Agreement shall inure to the benefit of and be binding on the successors and permitted assigns of the Parties.

3.04 Further Assurances. Each Party agrees to Execute and deliver any instruments and to perform any acts as may be necessary or reasonably requested by the other in order to give full effect to this Agreement.

3.05 Actions of CCCSWA in Its Governmental Capacity. Nothing herein shall be interpreted as limiting the rights and obligations of CCCSWA in its governmental or regulatory capacity.

3.06 Contractor's Obligations Performed at Its Sole Expense. Contractor shall perform Contractor's Obligations at its sole cost or expense and shall not be entitled to any adjustment in compensation for Facility Enhancement or Facility Operation, or any other compensation from CCCSWA as a result thereof, unless expressly provided for herein.

3.07 Exercise of Options. The Parties' exercise of any approval, disapproval, option, discretion, election or choice hereunder shall be in each respective Party's independent, sole, exclusive and absolute control and judgment.

3.08 Compliance with Applicable Law. Contractor shall perform all of Contractor's Obligations hereunder, and shall cause its subcontractors to perform Contractor's Obligations hereunder, in accordance with Applicable Law and Permits, subject to Change in Law handled in accordance with Extraordinary Review procedures in Article 11.

3.09 Confidentiality of Contractor Information. Contractor acknowledges and agrees that information submitted to CCCSWA pursuant to this Agreement may be subject to compulsory disclosure by CCCSWA upon request from a member of the public under the California Public Records Act, Government Code Section 6250 et seq.

CCCSWA recognizes and agrees that certain information that may be disclosed by Contractor or that Contractor may be required to submit pursuant to the Agreement may be considered confidential and proprietary by Contractor. CCCSWA agrees to protect the confidentiality of materials submitted to it to the extent permitted by the Public Records Act, in accordance with the procedures, and subject to the limitations described in this Section. Contractor shall specifically and clearly designate as "CONFIDENTIAL" all materials that it wishes CCCSWA to treat in confidence and withhold from public disclosure. CCCSWA agrees not to voluntarily disclose any materials so designated to Persons other than officers, attorneys, employees and consultants of CCCSWA involved in overseeing and Operating the Facility who are similarly obligated.

If CCCSWA receives a request from a third party to review and/or copy material designated confidential, it will inform Contractor and will permit Contractor to present arguments and facts to CCCSWA in support of the position that the material is entitled to an exemption from disclosure under the Public Records Act and should not be released. If CCCSWA determines that the material is not entitled to an exemption and that it must be released, CCCSWA will advise Contractor of such determination prior to releasing the material so that Contractor may seek a court order enjoining its release. If CCCSWA determines that the material is entitled to an exemption, and the Person who requested the information files a legal action seeking its release, CCCSWA will advise Contractor and will not oppose a motion by Contractor to intervene in the action. Contractor must either intervene or agree to pay CCCSWA's legal expenses in defending the action; otherwise CCCSWA will have no obligation to affirmatively defend the action and may release the information sought without any liability whatsoever to CCCSWA.

Without intervening to limit the remedies available to each Party due to any breach of this provision, each Party agrees the damages at law for any such breach would be an insufficient remedy to the other and that the non-breaching Party shall be entitled to injunctive relief or other equitable remedies in the event of any such breach.

3.10 Sole Responsibility. Each Party shall be solely responsible for the acts and omissions of its officers, employees, subcontractors and agents.

3.11 Subcontractors. No substantive part of Contractor's Obligations with regard to Facility Operations shall be subcontracted, including, but not limited to, scale house, Acceptance, Processing, Recovery, and Marketing activities unless CCCSWA approval has been obtained.

CCCSWA shall not unreasonably withhold its approval of subcontractors. In an emergency, upon immediate telephonic or other oral Notice to CCCSWA, followed promptly by written Notice, Contractor may engage additional or substitute subcontractors for up to seven (7) calendar days, provided that at the expiration of such seven (7) calendar days, engagement of such additional or substitute subcontractors may be continued only if CCCSWA consents in writing thereto, which consent shall not be unreasonably withheld.

All subcontractors shall be licensed as required under Applicable Law to perform their subcontracted work. Contractor shall remain liable for the full and complete performance of Contractor's Obligations hereunder. Any reference to Contractor's Obligations hereunder shall be deemed to include any subcontractor performing such Obligations, whether or not the language hereof provides that Contractor shall perform, or cause to be performed, such Obligations. References to Contractor causing performance of any Contractor's Obligation by a subcontractor or another Person shall not create the inference that Contractor is not primarily obligated to CCCSWA to meet such Obligations. This Section does not apply to vendors and materials suppliers whose work and role does not materially affect Facility Enhancement or Operations.

3.12 Cooperation. The Parties recognize and agree that unforeseen developments and circumstances may occur during the Term that materially modify or otherwise affect one or both Parties' respective Obligations. The Parties further agree that in such event each Party will cooperate in a professional manner and negotiate with the other in good faith to address and resolve such unforeseen developments.

ARTICLE 4. TERM OF AGREEMENT

4.01 Base Term. This Agreement shall become effective on March 1, 2005 and continue in effect for ten (10) years from the date of commencement unless terminated earlier in accordance with Article 14.

4.02 Term Extensions

a. CCCSWA Right of Renewal. CCCSWA may, at its sole discretion, Extend the Base Term beyond ten (10) years for up to two (2) periods of up to (12) twelve months each. CCCSWA shall Notify the Contractor of its intention to exercise this Extension provision no later than one hundred and fifty days (150) prior to end of the Base Term or the then-current Extension.

b. Agreement in Full Effect. All provisions of this Agreement shall remain in effect during any Extension, including the Contractor's Obligations and all provisions related to Contractor's Costs.

4.03 Survival of Certain Provisions. All indemnifications provided for herein and any other rights and obligations of the Parties expressly stated to survive the termination of this Agreement, shall survive such termination including, but not limited to, the following provisions: Section 8.08 (Records and Reports), and Article 12 (Insurance, Indemnity, Bonds, Further Assurances).

4.04 CEQA and Permit Process. CCCSWA is relying on the Contractor's assurances that obtaining additional land use Permits to increase the Facility's capacity will not delay the Facility being able to commence Facility Operations as of March 1, 2005 or conclude Performance Testing as of February 14, 2005.

ARTICLE 5.

[INTENTIONALLY RESERVED]

ARTICLE 6. FACILITY USERS

6.01 Facility Users. Facility users include Approved Users, Existing Users and Other Users.

6.02 Approved Users. As of the Execution Date of this Agreement, Approved Users include CCCSWA and CCCSWA Collector(s). At any time during the Term, Contractor may designate additional Approved Users with CCCSWA's consent. CCCSWA consent shall not be required for inclusion of Existing Users, Other Users or Pacific Rim Delivered Material. Prior to adding additional Approved Users, CCCSWA may request Contractor to provide a written description for CCCSWA review of the Contractor's proposed additional Approved Users and operational and financial data demonstrating that Acceptance of Recyclable Materials from such new Approved Users will not adversely affect the ability of Contractor to Process and Market CCCSWA's Recyclable Materials. In considering the inclusion of an additional Approved User, CCCSWA will take into account factors that include, but are not limited to, the proposed Tonnage, duration of the contract with such Person(s), and the Contractor's proposed material revenue percentage share with CCCSWA. This approval shall only apply to residential Commingled Recyclable Materials delivered by Approved User(s) and their Collector(s).

If Additional Approved User(s) are agreed to, a contract amendment shall be prepared and attached to the Agreement to amend the definition of Approved Users to encompass the additional Approved User(s) and to modify other provisions of the Agreement as necessary.

CCCSWA recognizes that the Contractor may solicit Other Users that will Deliver commodities that are not presently known and contemplated by the Contractor. CCCSWA shall have no rights to any revenue accrued from these efforts. CCCSWA shall have no approval rights with regard to Contractor's Accepting commodities from Other Users unless such Acceptance poses a material negative impact on CCCSWA.

6.03 Permitting Requirements for Additional Approved User(s). Additional Approved Users may only be Accepted if the Facility Permits allow for such. CCCSWA's amendment to the Agreement to approve additional Approved User(s) does not warrant that the Contractor will be capable of obtaining necessary approvals and Permit modifications to Accept Recyclable Materials from additional Approved User(s). Contractor will be responsible for applying, and using, Reasonable Business Efforts to secure the necessary regulatory approvals.

6.04 Contractor Compensation for Additional Approved User(s). Contractor's sole compensation for Acceptance of Recyclable Materials from additional Approved User(s) will be through contractual arrangements between Contractor and such Person(s). CCCSWA shall in no way be responsible for compensating Contractor for Recyclable Materials Delivered to the Facility by other Approved Users, nor shall CCCSWA have any responsibility for any operational activities related to materials Delivered by other Approved Users.

6.05 Other Users and Existing Users. Contractor's compensation for Acceptance of Recyclable Materials Delivered by Other Users and Existing Users shall be that which Contractor determines to pay or collect directly from such Persons. CCCSWA shall in no way be responsible for compensating Contractor for Recyclable Materials Delivered to the Facility by Other Users and Existing Users, nor shall CCCSWA have any responsibility for any operational activities related to materials Delivered by Other Users or Existing Users.

6.06 CCCSWA Right to Review Contracts. CCCSWA reserves the right to review and approve the terms of contract(s) with all Approved Users including any amendments to such contracts. CCCSWA reserves the right to review the terms of the contract(s) with Other Users that relate to the calculation of Residue as a percentage of Recyclable Materials Accepted from Other Users, and the method of tracking, allocating, and reporting Recyclable Materials.

ARTICLE 7. FACILITY ENHANCEMENT

7.01 Facility Enhancement Costs and Schedule

a. Enhancement Costs. Contractor is solely responsible for all costs of Facility Enhancements.

b. Enhancement Schedule. In order to ensure that the Facility is fully Operational by March 1, 2005, it is essential that Facility Enhancement activities be conducted in a timely manner. The schedule, provided in Exhibit 5, includes anticipated dates for major milestone events.

c. Monthly Progress Reports. On the first day of every month following commencement by Contractor of Facility Enhancement Activities and every month thereafter until the Facility Operations Commencement Date and at other times within ten (10) Working Days of a request by CCCSWA, Contractor shall provide a written progress report describing commenced, on-going, and completed Facility Enhancement activities since any previous report; and compare such progress with such schedule. Upon CCCSWA request, Contractor shall meet with CCCSWA to discuss Facility Enhancement status.

7.02 If CEQA Review Needed. Contractor believes the Facility Enhancement, including Permitting if any required, of its existing facility does not require CEQA review, but should that prove incorrect the Contractor shall prepare necessary CEQA reports and documentation, and take other actions, as necessary and appropriate. Contractor shall be responsible for all costs associated with any required CEQA compliance.

7.03 Site. Contractor shall be the sole lessee or Owner of the Site, which shall be located at 3690 Sprig Drive in the Benicia Industrial Park. Any lease must give Contractor right to use and possess the Site to meet Contractor's Obligations for the Term, and shall be satisfactory to CCCSWA. Contractor shall provide CCCSWA with a notarized copy of any lease, or the recorded deed therefore certified as a true copy by the County Recorder by the Agreement's CCCSWA approval date.

7.04 Permits. Contractor will apply for, and obtain all Federal, State, City, and any other government Permits, orders, licenses and approvals required by Applicable Law for Facility Enhancement, Operation, and Residue hauling. In applying for and obtaining all such Permits, Contractor is responsible for ensuring that such Permits will allow Contractor to perform all of Contractor's Obligations.

7.05 Financing. Contractor has secured a source of debt and/or equity funds from its own personal holdings or a bank or other financial source in sufficient amounts and at times necessary to fulfill all Contractor's Obligations. CCCSWA shall have no obligations with regard to the Financing nor shall this Agreement be construed as any form of guarantee on behalf of CCCSWA of the financing.

7.06 Facility Requirements. Contractor shall design and construct the Facility as required to fulfill Contractor's Obligations. Contractor is solely responsible for the adequacy, safety, and suitability of its Facility. Contractor shall Enhance the Facility in accordance with Applicable Law and shall use Standard Industry Practices.

7.07 Facility Upgrading and Equipping. Contractor has sole responsibility for Facility Enhancements. This sole responsibility includes overseeing all aspects of this activity including Site Enhancement, schedule management, financing Facility upgrades, ensuring that the Facility is constructed according to, and is fully Operational substantially in accordance with all Applicable Law.

CCCSWA shall have the right, but not the obligation, to observe and inspect Facility Enhancement and equipping activities at the Facility. In connection therewith, CCCSWA and its representatives shall have the right to enter the Site and Facility upon one (1) Working Day's Notice and speak to any of Contractor's employees, subcontractors, or other Persons providing construction and equipping services; provided that CCCSWA and its representatives shall comply with the Contractor's reasonable safety and security rules and shall not interfere with the work of the Contractor or its subcontractors. Upon CCCSWA request, Contractor shall ensure that its employees, subcontractors, and such other Persons cooperate with CCCSWA and respond to CCCSWA's inquiries.

7.08 Establishment of Vehicle Tare Weights. Within the time frame specified in the Schedule provided in Exhibit 5, Contractor shall weigh Approved User vehicles to determine unloaded ("tare") weight of each vehicle. Contractor shall record tare weight, Collector's name, and vehicle identification number for each Approved User's Collection vehicles. Within ten (10) Working Days of truck weighing, Contractor shall provide CCCSWA and the Approved User a report listing vehicle tare weight information. It is the intent of the Contractor to establish an average tare weight for each Approved User's vehicle and at its discretion require CCCSWA's Collector to re-establish each vehicle's tare weight on a schedule that is reasonable yet at the Contractor's discretion.

7.09 Performance Testing

a. General. Performance Testing shall begin no later than the date provided in Exhibit 5. During Performance Testing, Contractor shall Accept, receive, and Process Recyclable Materials in accordance with this Agreement including, but not limited to, the Operating procedures in Article 8 conditioned upon CCCSWA's making available such material on or before the date provided in Exhibit 5. Contractor shall provide CCCSWA a Performance Test Plan at least thirty (30) days prior to the commencement of Performance Testing. The Performance Test plan shall include at a minimum a detailed description of the volumes and types of Recyclable Materials required, test schedule, Operating staff, test crew, test procedures, data to be collected, monitoring procedures, and basis for determining test results that demonstrate the fulfillment of the three elements of the Performance Test Guarantee: Design and Operating Throughput Guarantee Tests and Vehicle Turnaround Guarantee Test. Contractor shall provide all staff and equipment necessary for Performance Testing to fulfill all of Contractor's Obligations. The requirements of these tests shall be conditioned upon CCCSWA's making available the specified amount of Recyclable Materials during a period of not less than five (5) Working Days.

(1) **Design and Operating Throughput Guarantee Tests.** The Design and Operating Throughput Guarantee tests must demonstrate the Facility 1) has the capability to Accept, weigh, receive, unload, sort, package and ship one hundred and thirty (130) Tons per day of Recyclable Materials Delivered from CCCSWA Collector's vehicles at the Facility for a minimum of five (5) consecutive Working Days, 2) can Accept one hundred and sixty (160) Tons per day of Recyclable Materials Delivered from CCCSWA, 3) can Process fifteen (15) Tons per Operating hour. The

Design and Operating Throughput Guarantee tests must also demonstrate that the Facility can meet these criteria while Operating in a manner fully consistent with applicable regulatory and land use requirements and entitlements.

(2) **Vehicle Turnaround Test.** The Vehicle Turnaround Test and subsequent Operating procedures shall demonstrate that on average each incoming Approved User's vehicle is able to check in at the receiving weigh scale, unload within the greater of (i) twenty (20) minutes after arriving at the Facility or (ii) the average turnaround time for a Recycling vehicle dumping at the Davis Street facility during the previous one year period, based on reasonable data provided by CCCSWA's Collector. Testing procedures shall include recording the real time each vehicle arrives at the Facility and exits the Facility. The driver shall ask for "certification" by a Contractor employee of the elapsed time of their vehicle at the Facility. The Contractor's certification shall include a notation indicating the reason for an actual turnaround time greater than twenty (20) minutes.

b. CCCSWA Right to Observe. CCCSWA or its agent shall have the right to, at CCCSWA's discretion, observe the Performance Test. Contractor shall provide CCCSWA, including its representatives, with access to the Facility during Performance Testing to observe and monitor the Performance Test and make independent tests during the Performance Test period, so long as such independent tests do not materially interfere with the Performance Test.

c. Performance Test Guarantee Notice

(1) **Notification.** At the conclusion of the test period, Contractor shall give CCCSWA prompt written Notice that the Facility Operates in accordance with the Performance Test plan and meets the Performance Test Guarantee, which warranty Contractor acknowledges and agrees is material. Upon request, Contractor shall submit to CCCSWA all raw data generated during the test, calculations made to support test results, and test results; and concluding, in the judgment of Contractor, whether the Facility passed or failed the Performance Test.

(2) **Failure to Pass Performance Test.** In the event the Facility does not pass the Performance Test, the Contractor will take actions necessary to pass such Performance Test, including adding additional supervisors, sorting crews and equipment; providing increased training to employees; and/or following recommendations of CCCSWA's agent(s). Contractor shall pay the costs of such actions.

7.10 Delivery of Recyclable Materials

a. General. Other than for the purposes of Performance Testing, CCCSWA shall commence Delivery of Recyclable Materials to the Facility, and Contractor shall commence Facility Operations, on March 1, 2005 ("Facility Operations Commencement Date"). Contractor shall provide CCCSWA Notice no less than fourteen (14) calendar days prior to the Facility Operations Commencement Date if Contractor will not be able to commence Facility Operations on such date. CCCSWA's obligation to commence Delivery of Recyclable Materials shall be contingent upon Contractor's successful completion of Performance Testing and Contractor's satisfaction of the terms and conditions of this Agreement including, but not limited to, the requirements of Section 7.10(b).

b. Commencement of Delivery of Recyclable Materials by CCCSWA shall be contingent upon the following:

- (1) **Contractor.** Contractor being able to fully perform Facility Operations.
- (2) **Site Permits and Approvals.** Contractor and Facility being in compliance with Applicable Law with respect to any and all Permits required for Facility Operations.
- (3) **Site Acquisition.** Contractor providing copy of lease or recorded deed to the Site satisfactory to CCCSWA.
- (4) **Financing.** Contractor securing a source of debt and/or equity funds from its own personal holdings or a bank or other financial source in sufficient amounts and at times necessary to fulfill all Contractor's Obligations. The terms and conditions of Contractor's proposed financing shall be substantially similar to that used by Contractor and other developers of similar facilities taking into consideration any differences caused by changes in financial markets.
- (5) **Financial Guaranty.** Execution by Guarantor of a legally valid, binding and enforceable Financial Guaranty Agreement attached hereto as Exhibit 6, in a form satisfactory to CCCSWA Attorney that the Financial Guaranty Agreement has been duly Executed and delivered by the Guarantor and constitutes an enforceable, legal, valid, and binding obligation of the Guarantor in accordance with its terms.
- (6) **Performance Assurance.** Contractor executing a Performance Assurance in an amount of \$250,000.00, provided through a performance bond, letter of credit, cash bond or equivalent, or other similar security device. The Performance Assurance shall be in a form satisfactory to the CCCSWA attorney and is attached hereto as Exhibit 8.
- (7) **Confirmation of Contractor's Representations and Warranties.** Representations and warranties made by Contractor in Section 2.01 are true and correct in all material respects, there have been no substantial changes in the financial position of the Contractor, and there have been no significant deviations from the Facility Description in Exhibit 4.
- (8) **Adverse Changes in Guarantor or Contractor.** Since the Execution Date, there shall not have occurred any material change, financial or otherwise, that would adversely affect the ability of the Guarantor to perform its obligations under the Financial Guaranty Agreement or the ability of Contractor to perform Contractor's Obligations hereunder or its obligations under any other agreement, contract or instrument entered into or to be entered into by the Contractor in connection with Facility Operation, Contractor's Obligations, the services hereunder and the transactions contemplated hereby.
- (9) **No Default.** Contractor not being in breach or default under this Agreement.

7.11 Operations and Maintenance Manual

a. Draft Operations and Maintenance Manual. On or before the date or within the time frame specified in the schedule provided in Exhibit 5, Contractor shall submit to CCCSWA a draft Operations and Maintenance Manual detailing procedures for Facility Operation, including

procedures during peak Facility usage and emergencies. The Manual shall contain sufficient detail to allow a third party reasonably experienced in Recycling Material Processing and material Recovery Operations to Operate and maintain the Facility and to perform emergency shut-downs of the Facility. In particular, the Operations and Maintenance Manual shall include, but not be limited to, the information as specified in Facility Operations, standards and procedure requirements stated in Article 8 and Exhibit 4. This manual should include a health and safety plan and hazardous waste removal procedures. CCCSWA shall review and provide comments within thirty (30) calendar days of receipt of the draft Operations and Maintenance Manual. If Contractor does not receive comments within this period, Contractor may proceed to finalize the Operations and Maintenance Manual.

b. Final Operations and Maintenance Manual. Contractor shall submit to CCCSWA a final version of the Operations and Maintenance Manual incorporating CCCSWA comments provided on the draft Manual in accordance with the schedule in Exhibit 5.

7.12 Failure of Facility to be Ready for Performance Testing and Delivery of Recyclable Materials

a. Failure of Facility to be Ready for Performance Testing. The Facility shall be ready for Performance Testing no later than February 1, 2005. Contractor shall be in breach of this Agreement and subject to breach procedures of Article 13 if Contractor fails to meet such date.

b. Failure of Facility to be Ready for Operations. The Facility shall be ready for Facility Operations no later than the Facility Operations Commencement Date. Contractor may request an extension of the Facility Operations Commencement Date for a period no greater than four (4) months at the time Contractor provides the Notice required by Section 7.10(a). Contractor's request for an extension shall be submitted in writing and shall clearly describe what function(s) of the Facility Operations cannot be accomplished in accordance with the schedule contained in Exhibit 5. CCCSWA shall review Contractor's request for an extension and may approve the requested extension, such approval shall not be reasonably withheld. Prior to the expiration of an initial four (4) month extension of the Facility Operations Commencement Date, Contractor may request an additional two (2) month extension. However, such request shall be accompanied by such documents and information as will demonstrate that the Facility will, in fact, be ready for full Facility Operations by the expiration of this additional extension on or before September 1, 2005. If CCCSWA grants an extension(s) and Contractor fails to meet Facility Operations Commencement Date on or before the expiration of the extension(s) period, Contractor shall be in default of the Agreement and subject to provisions in Article 13.

c. CCCSWA's Remedies. If any event itemized in Sections 7.02 through 7.11 does not occur on or before the times provided therein, as extended in accordance with Section 7.12(b), CCCSWA may exercise any remedies in accordance with Articles 13 and 14, including seeking specific performance of the Contractor's Obligations in accordance with Article 13, and/or terminating this Agreement in accordance with Article 14.

ARTICLE 8. FACILITY OPERATION

8.01 Operations and Maintenance Standards. Beginning on the Facility Operations Commencement Date, the Contractor warrants to comply with the Facility Operating Guarantee throughout the Term and to perform Contractor's Obligations with respect to Facility Operations hereunder in accordance with sound management and Operations practice, its Operations and Maintenance Manual, the Facility description in Exhibit 4, regulatory requirements, Applicable Law, Standard Industry Practices, the provisions hereof, and covenants, conditions and restrictions pertaining to the Site.

8.02 Facility Operations Commencement Date

Facility Operations shall commence on March 1, 2005 unless otherwise provided for in this Agreement.

8.03 Facility Operating Guarantee

a. Operating Throughput Guarantee. Beginning on the Facility Operations Commencement Date and continuing through the Term, the Contractor guarantees its ability to Accept, sort, Process, package, and Market a minimum of one hundred and thirty (130) Tons of Recyclable Materials per day and perform same in a manner consistent with all applicable regulatory and land use requirements. Contractor also guarantees its ability to Accept up to a maximum of 160 Tons per day of CCCSWA Delivered Recyclable Materials in addition to any Recyclable Materials brought to Facility by Other Users or Existing Users.

b. Diversion Guarantee. Beginning on the Facility Operations Commencement Date and continuing through the Term, Contractor shall Recover no less than ninety percent (90%) by weight of CCCSWA's Recyclable Materials Accepted at Facility.

c. Vehicle Turnaround Guarantee. Contractor guarantees that CCCSWA Collector's vehicles Delivering Recyclable Materials are able to unload and exit the Facility within an average of twenty (20) minutes of arriving at the Facility absent vehicle breakdown, driver negligence, lack of cooperation, or driver parking to use restrooms, telephone or other driver related issues. Contractor shall manage the receiving and unloading area in order to facilitate the access and unloading of vehicles. For each occurrence in a month greater than 20 where a CCCSWA Collector's vehicle exceeds 20 minutes at the fault of the Contractor, liquidated damages will be assessed unless the average turnaround time for all CCCSWA Collector's vehicles does not exceed 20 minutes during the same month or it is demonstrated that the average turnaround time at the Davis Street SMaRT exceeds 20 minutes.

This 20-minute turnaround guarantee does not apply to those instances where Collector's vehicles choose to drain the used oil tank in addition to Delivering Recyclable Materials. Draining of the used oil tanks shall be accommodated in a prompt manner, consistent with Standard Industry Practices.

8.04 General Operations

a. Facility Receiving Hours. Receiving and operating hours of the Facility are as follows:

Contractor shall Accept Recyclable Materials from CCCSWA's Collector at the Facility from 5:00 a.m. to 5:00 p.m. each Monday through Friday and on Saturdays during any week of a non-working holiday.

(1) **Continuous Operations.** Beginning with Facility Operations, the Contractor shall keep open and Operate the Facility continuously and uninterruptedly during Facility Receiving Hours for the Term hereof, except when Contractor is prevented from doing so by any Uncontrollable Circumstance.

(2) **Extended Facility Receiving Hours.** Upon request of CCCSWA, no less than one (1) Working Day in advance or any other mutually agreed time period, or in event of emergencies such as truck breakdown, poor weather or road conditions, as soon as possible using Reasonable Business Efforts, Contractor shall Accept Recyclable Materials at times other than Facility Receiving Hours. Contractor may charge CCCSWA, if directed by CCCSWA, for extended Facility Receiving Hours in accordance with Section 10.11. This provision is intended to address temporary extension of Facility Receiving Hours that may be needed from time to time to accommodate special circumstances.

(3) **Notification in Emergency.** It is the Approved Users' responsibility to notify Contractor of emergencies, changes in scheduling, etc.

b. Visitor Education Facility. Beginning on or before September 1, 2007, Contractor shall make the Visitor Education Facility available for use by CCCSWA and/or Collector. The Facility will be available for scheduled visits at a minimum, from 8:00 a.m. to 1:00 p.m., Monday through Friday, except for Holidays, or at any other times upon mutual agreement. Contractor shall deliver visitor presentations and provide no more than twenty (20) tours of the Facility per Contract Year from organizations within the CCCSWA Service Area approved by CCCSWA unless impractical due to safety concerns. Contractor shall contribute \$20,000 towards the construction of a Visitor Education Facility and program development, including Site improvements, and multimedia presentations.

c. Scale Operation

(1) **Installation, Maintenance and Operation.** Contractor shall maintain at least (1) State certified motor vehicle scale in accordance with Applicable Law and in a manner that allows for an Approved User's Delivery vehicles with tare weights to bypass the weighing operation when exiting the Facility after unloading Permitted Materials at the option of the Contractor. All scales shall be linked to a centralized computer recording and billing system which shall be compatible with Contractor's systems and accounts for tracking all incoming and, if necessary, outgoing materials. All weighing shall be conducted by Contractor representative who is a licensed weigh master.

(2) **Vehicle Tare Weights.** When additional or replacement vehicles are placed into service by the Approved User(s), the Contractor shall promptly weigh such additional replacement vehicles and provide the tare weight(s) to the Approved User and CCCSWA using the same method described in Section 7.08.

(3) **Substitute Scales.** To the extent the scale is inoperable, being tested, or otherwise unavailable, Contractor may substitute portable scales until the permanent scales are replaced or repaired. Contractor shall arrange for any inoperable scale to be repaired as soon as possible, and in any event, within three (3) working days (excluding Holidays) of the failure of the permanent scale. If Contractor cannot provide portable scales on the fourth day, Contractor shall direct CCCSWA Collector's Vehicles to a public scale located within 2 miles of the Contractor location at Metropolitan Van and Storage on Industrial Way, as a temporary substitute scale(s) until the repair of the permanent scale can be procured. The Contractor shall pay for the public scale weight ticket expense. The Contractor shall also pay CCCSWA's Collector for the extra distance traveled on that fourth day. CCCSWA's Collector shall be entitled to the incremental direct labor cost reimbursable on the fourth day if the resulting weighing and dumping function exceeds 35 minutes from the time the Approved User Vehicle leaves the public scale with its heavy weight arriving at the Contractor Facility no later than 5 minutes thereafter and is unable to dump and exit the Contractor Facility within the 35 minute time frame.

(4) **Estimates.** Pending provision of portable scales or during power outages, or as a result of other equipment failures, Contractor shall estimate the quantity of Recyclable Material Delivered on the basis of historical tons of Recyclable Materials Delivered per collection vehicle per route. These estimates shall take the place of actual weighing and shall be the basis for records while scales are inoperable. If CCCSWA and Contractor cannot agree on the estimated quantities, the Parties shall handle the matter in accordance with the dispute resolution procedures in Article 15.

(5) **Testing.** Contractor shall test and calibrate all scales in accordance with Applicable Law, but at least every twelve (12) months. Upon CCCSWA request, Contractor shall provide CCCSWA with copies of test results. Contractor shall further test and calibrate any or all scales upon written request by CCCSWA, within three (3) Working Days of such request. If such test results indicate that the scale or scales complied with Applicable Law, CCCSWA will reimburse Contractor for the costs of such tests. If such test results indicate that the scale or scales did not comply with Applicable Law, Contractor will bear the costs thereof and Contractor shall at its own cost adjust and correct, consistent with the results of such test, all weight measurements recorded from the date of such request.

(6) **Records.** Contractor shall maintain scale records that provide information such as, but not limited to, inbound and outbound weights of Collector's vehicles (if outbound vehicles are weighed), vehicle identification number, jurisdiction of origin of Recyclable Materials Received, type of material, truck identification and/or classification, and truck type, and weights, and destination of Processed and Residue materials outbound trucks.

d. Security. Contractor shall maintain adequate security at the Site during the Term.

e. Personnel Qualifications and Performance

(1) Contractor shall engage and train qualified and competent employees, including managerial, supervisory, clerical, maintenance, and operating personnel, in numbers necessary and sufficient for Facility Operations and to perform all other Contractor Obligations. Contractor shall have a full-time on-Site Facility Manager during Operations as well as a back up. The Facility manager will be responsible for promptly reporting to CCCSWA any problems associated with

offloading, labor, or quality of incoming materials. The Facility manager should be available by phone at all times during Facility Receiving hours.

(2) Contractor shall train such staff to perform their work in a safe and efficient manner in accordance with the health and safety plan in the Operation and Maintenance Manual and shall ensure that each staff person treats CCCSWA employees and it's Collector with courtesy.

f. Used Oil Collection Facility. Contractor shall provide used oil drop-off for unloading the used oil accumulated in the Collector's vehicles used oil tanks collected from CCCSWA customers within the portion of the Service Area whose Recyclable Materials are Delivered to the Facility. Contractor shall design, construct and Operate the used oil drop-off facility in a manner consistent with Applicable Laws for such Operations and use Reasonable Business Efforts to obtain all applicable grants, rebates, payments, and state reimbursement funds available for publicly accessible used oil drop-off programs.

g. Equipment, Repair and Maintenance

(1) **General.** Contractor shall purchase, lease, or otherwise procure, Operate, and maintain equipment, and materials necessary for Performance Testing, Facility Operations, and Recovered Materials Marketing while meeting all Operating requirements.

Contractor shall maintain the Facility, Processing equipment, and the Site in good working order and repair. Contractor shall maintain a spare parts inventory and perform periodic maintenance in accordance with the Operations and Maintenance Manual and Exhibit 4. If such activities must be performed during Facility Receiving Hours the maintenance and repair activities shall be performed in a manner that does not impede the Contractor's ability to fulfill Contractor's Obligations and does not jeopardize safety of Facility Users or employees. Contractor shall maintain the aesthetic appearance of the Facility and Site in a clean and neat manner in accordance with the plans and specifications and any City of Benicia imposed conditions with due regard for reasonable control of odors, dust and noise.

(2) **Safe Condition and Repair.** Contractor shall maintain in good condition the roofs, structural portions and exterior walls (including plate glass, glass windows, window frames, doors and door frames), paved exterior areas and scales. Contractor shall keep and maintain in good, safe condition and repair the Facility, appurtenances and every part thereof, including without limitation the stationary equipment; plumbing and sewage facilities; mechanical, electrical, lighting, heating, ventilating and air conditioning systems; fire and dust suppression systems; fuel storage and dispensing facilities; and all personal property furnished by Contractor including vehicles.

(3) **Periodic Maintenance.** Contractor shall perform periodic maintenance on all equipment as specified in the Operations and Maintenance Manual and in accord with Standard Industry Practices.

(4) **Repair of Damage.** Contractor shall also repair any damage to the Facility caused by the actions of its employees, subcontractors, or other Contractor agents.

h. Safety

(1) **Traffic Flow.** Contractor shall direct traffic upon entry to the Site so that vehicles travel, queue, unload and exit in a safe manner.

(2) **Fire Protection.** Contractor shall provide and maintain all necessary and appropriate fire control equipment, as provided in the Operations and Maintenance Manual and in accordance with City of Benicia fire inspection team requirements.

(3) **Safety Training.** Contractor shall perform regular safety training for all Facility employees and safety training for its subcontractors as appropriate.

i. Litter and Vectors. Contractor shall maintain the Facility and Site in a neat and orderly condition that minimizes the potential for birds, rodents and insects, and shall, on a daily basis, remove litter and debris on Site and litter and debris along major access roads. In the event of apparent vector activity, Contractor shall implement reasonable additional vector control measures within twenty-four (24) hours.

j. Updated Operations and Maintenance Manual. On or before December 1 of each year following the March 1 start of the Contract year, Contractor shall review the Operations and Maintenance Manual, revise it to reflect any changes in Facility Operation procedures during the previous Contract year, describe anticipated changes and Scheduled Facility Downtime during the upcoming Contract year, and submit a copy of the updated Manual and written information regarding Scheduled Facility Downtime to CCCSWA. CCCSWA may, but need not comment on such annual update. Neither the annual review nor comment upon, nor the failure of CCCSWA to comment upon the Operations and Maintenance Manual shall (1) relieve Contractor of any of Contractor's Obligations and responsibilities hereunder or impose any liability upon CCCSWA, nor (2) be deemed to be a representation by CCCSWA that Contractor's Facility Operation is in accordance with the Operations and Maintenance Manual or signifies that Contractor has complied with all Contractor's Obligations with respect to Facility Operation or with Applicable Law.

k. Quarterly Meetings. CCCSWA and Contractor shall meet no less than quarterly to discuss Facility Operation and any related matters raised by either Party.

l. Complaints about Operation of Facility

(1) **General.** Contractor shall take all reasonable steps to minimize complaints. All complaints about the Operation and maintenance of the Facility shall be directed to Steve Moore. Contractor shall promptly and politely respond to complaints, including complaints from CCCSWA Collector's drivers, CCCSWA staff and its representatives, and the public at large, related to Contractor's performance or nonperformance of Contractor's Obligations. Contractor shall use all Reasonable Business Efforts to resolve such complaints within five (5) calendar days of receipt thereof. Such complaints shall not be directed by Contractor to CCCSWA with the exception of those that pertain to CCCSWA's Obligations. The Facility manager shall compile a log of all complaints brought to the attention of Contractor in a form that can be readily audited, and that indicates the date and time the complaint was received; the name, address and telephone number of the Person making the complaint; the corrective action taken in response to the complaint; and the date the corrective action was taken.

Each month Contractor shall send CCCSWA a copy of the complaint log for the previous month along with the Contractor's monthly report. In the event multiple complaints are received during a given month, Contractor shall pay liquidated damages in accordance with Exhibit 7.

(2) **Litter Complaints.** If Contractor receives a complaint regarding litter problems on Site or along major access roads, Contractor shall promptly clean up litter within the same Working Day if complaint was received before noon and before noon of the following Working Day if the complaint was received after noon. Contractor shall be subject to liquidated damages specified in Exhibit 7 for failure to clean up litter within the time frames specified in this Section.

m. Signage. Contractor shall post easily-readable signs at the entrance and throughout the Facility detailing the regulations that must be followed by vehicles and personnel entering the Site; indicating, among other things the Facility Receiving Hours; the types of Recyclable Materials Accepted and a local telephone number to call for information and assistance in case of emergency. All signage shall, at a minimum, be provided in English.

n. Accommodating Approved User(s)' Drivers. Contractor shall provide a parking area for Collector's vehicles adjacent to the Site exit where Contractor will allow Approved User(s)' drivers to park collection vehicles and use bathroom facilities or make local telephone calls on telephones that Contractor shall make available to drivers. Contractor shall allow drivers to call their supervisors without charge.

o. Vehicle Parking, Fueling and Maintenance. Contractor may park, fuel, maintain, and repair vehicles at its Facility provided Contractor shall ensure that such vehicles do not interfere with or pose any hazard to CCCSWA's Collectors.

8.05 Delivery of Recyclable Material from Approved Users

a. Acceptance of Recyclable Materials. Contractor shall diligently visually inspect loads and periodically shall manually characterize loads to confirm that Accepted Recyclable Materials conform to the list contained in Exhibit 2 for such materials. Once Contractor Accepts materials, transfer of Ownership to Contractor occurs. Acceptance requires Contractor to not have problems with any load or material in the load.

CCCSWA has the right to periodically conduct studies at the Site to confirm Contractor's Processing activities meet the Residue limitations. In the event the CCCSWA Collector Delivers materials that exceed Residue limits by weight as specified in Section 8.03(b) definitions, Contractor and CCCSWA will work together to educate the public on keeping non-Recyclable Materials out of the Recycling stream.

b. CCCSWA Annual Tonnage Guarantee. CCCSWA, through its contract with its Collector, in any manner consistent with Applicable Law, shall cause all residential Recyclable Materials generated within the portion of CCCSWA's Service Area consisting of portions of the City of Walnut Creek, Town of Danville, and Unincorporated areas of Contra Costa County to be Delivered to the Facility commencing no later than March 1, 2005 unless a later date is provided for in this Agreement. CCCSWA has reviewed the volume history for those communities and anticipates they will generate no less than 28,000 Tons per Contract Year. Therefore, CCCSWA will guarantee that

28,000 Tons will be delivered or it will provide supplemental compensation to Contractor for the underpayment of annual fixed costs which is \$378,000 annually and will be proportionally allocated per Ton to the 28,000 Ton commitment, minus delivered Tons.

c. Rejection of Unpermitted Material

(1) **Inspection.** Contractor shall use Reasonable Business Efforts and Standard Industry Practices to detect and discover Unpermitted Material and shall not knowingly Accept Unpermitted Material. Contractor shall institute the inspection procedure contained in the Operations and Maintenance Manual, which includes Hazardous Waste removal procedures. Contractor shall promptly modify such procedure to reflect any changes in Applicable Law.

(2) **Unpermitted Materials Handling Costs.** Contractor is solely responsible for handling and arranging transport and disposition of any Unpermitted Material that is contained in or with Delivered Recyclable Materials Accepted by the Contractor, and for all related costs. Contractor has the right to pursue any remedies against the Approved User Delivering the Unpermitted Materials to the Facility provided that in no case shall that Person be CCCSWA. However, CCCSWA will assist the Contractor to recover its cost in such cases where this problem was caused by CCCSWA Collector.

(3) **Rejection of Contaminated Loads.** It is the Contractor's responsibility to monitor the incoming loads for excessive contamination and to inform the driver in writing if a particular load's contamination level exceeds 10%. The Contractor can reject Deliveries from a CCCSWA Collector truck if its contamination level consistently exceeds 10%. However, in order to do so, the Contractor must 1) identify the truck number, 2) document at least 5 dates of contaminated load Delivery, 3) provide a description of the contaminant materials, and 4) provide pictures evidencing the contamination. After written notification to the CCCSWA, the CCCSWA and its Collector can inspect the truck's loads to determine the source of the contamination and what steps need to be taken.

Should the Contractor not Accept any Delivered materials due to the presence or strong suspicion of Unpermitted Materials, Contractor shall immediately Notify CCCSWA verbally and then follow verbal notification with written Notice and the Notice shall identify Contractor's reasonable reason for rejection of the Delivered material and identify the Collector's truck which Delivered such material if the truck was identified. In addition, Contractor will provide digital photographs to better illustrate each and every problem as they may occur.

If Contractor rejects material Delivered to the Facility at the time of delivery because it contains Unpermitted Material including Hazardous Waste or excess non Recyclable Materials, Contractor shall direct the Approved User who Delivered the Unpermitted Material to cause for removal and Disposal of it in a safe and lawful manner, at the sole expense of the Approved User(s).

In the event CCCSWA's Collector Delivers Unpermitted Materials on a frequent or continuous basis and refuses to provide for the proper handling and disposition of such Unpermitted Material, the Contractor shall provide written Notice to CCCSWA of such refusal by CCCSWA's Collector. Then CCCSWA and Contractor shall attempt in good faith to reach agreement within 30 days on a course of action to remedy the problem. If the Parties fail to reach agreement after making such good faith effort, Contractor may pursue the dispute resolution procedures in Article 15.

Nothing herein shall excuse the Contractor from the responsibility of handling such Unpermitted Materials in a lawful manner, including rejecting such materials as provided in this Section, and to arrange for the proper disposition of such materials if Accepted.

8.06 Recovered Materials Marketing

a. Marketing. Contractor shall Market Recovered Materials. On December 1, 2005, and annually thereafter, Contractor will provide CCCSWA copies of all contracts with end markets for the purchase of Recyclable Materials and other information related to the non-contract sale of Recyclable Materials in order to aid the CCCSWA in projecting its expected revenue for annual solid waste rate setting purposes.

b. End Use Certificate. To the extent practicable, Contractor shall obtain a certification of end use from the purchaser of Recovered Materials establishing that the Recovered Materials have been, in fact, Recycled, re-used or otherwise Diverted from Disposal. Contractor shall not permit Recovered Materials to be incinerated, pyrolyzed, distilled, gasified, biologically converted other than being composted, or otherwise subjected to transformation as defined in Public Resources Code Section 40201 except to the extent permitted by Applicable Law with respect to waste Diversion.

c. Marketing Records. Contractor shall maintain complete, accurate, and detailed Marketing records, including Tonnage of material Marketed, price, revenue received, purchaser, and end use in accordance with Section 8.08.

8.07 Residue Transfer

a. Disposal of Residue. Contractor shall dispose of all Residue to the Designated Disposal Facility(ies) for Disposal as specified in Article 9 during the receiving hours of the Designated Disposal Facility(ies). Contractor agrees to move all Residue off-Site within seventy-two (72) hours of receipt thereof, and in accordance with local policy and Applicable Law. Contractor shall haul Residue in accordance with the protocol included in the Operations and Maintenance Manual. Contractor shall store Residue at the Facility to avoid creation of a nuisance.

b. Equipment. Contractor shall be responsible for acquisition, supply, Operation, repair, and replacement of all equipment necessary for the separation, storage, loading and transport of Residue.

c. Initial Modes of Transfer. The initial mode of Residue transportation shall be by large volume trucks or roll off trucks and containers.

8.08 Records and Reports

a. General Record Keeping. Contractor shall maintain such accounting, statistical and other records related to its performance under this Agreement as shall be reasonably necessary to develop the financial statements and other reports required by this Agreement. Also, Contractor agrees to take direction from the CCCSWA on matters related to this Agreement, conduct data collection, information and record keeping, and reporting activities needed to comply with applicable laws and regulations and to meet the reporting and Recycling program management needs of CCCSWA and AB 939. To this extent, such requirements set out in this and other Articles of this Agreement shall

not be considered limiting or necessarily complete. In particular, this Article is intended to only highlight the general nature of records and reports and is not meant to define exactly what the records and reports are to be and their content. Further, with the written direction or approval of the Executive Director, the records and reports to be maintained and provided by Contractor in accordance with this and other Articles of the Agreement may be adjusted in number, format, or frequency.

Contractor shall maintain records required to conduct its Operations, to support requests it may make to CCCSWA, and to respond to requests from CCCSWA in the conduct of CCCSWA business. Adequate record security shall be maintained to preserve records from events that can be reasonably anticipated such as fire, theft and earthquake. Electronically maintained data/records shall be protected and backed up in order to ensure complete and accurate retrieval of information.

b. Financial Records

(1) **CCCSWA Costs and Revenue Segregated.** Detailed financial records as described in this Section, shall be maintained and cost and revenue information for the CCCSWA segregated from Other, Existing and Approved Users of the Facility.

(2) **Contractor's Accounting Records.** Contractor shall maintain accurate and complete accounting records containing the underlying financial and operating data relating to and showing the basis for computation of all costs associated with providing services under this Agreement. The accounting records shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP), which shall be consistently applied in their preparation.

(3) **Inspection of Records.** The CCCSWA, its auditors and other agents, shall have the right, during regular business hours, to conduct upon twenty four (24) hours notice on-site inspections of the records and accounting systems of Contractor, and to make copies of any documents it deems relevant to this Agreement.

(4) **Retention of Records.** Unless otherwise herein required, Contractor shall retain all records and data required to be maintained by this Agreement for at least five (5) years after the expiration or earlier termination of this Agreement. Records and data that are specifically directed to be retained shall be retrieved by Contractor and made available to the CCCSWA.

If in the sole opinion of the CCCSWA, records or data that are required for the determination of the Contractor's costs under this Agreement are not retrieved, the CCCSWA may make reasonable assumptions regarding what information is contained in such records and data, and such assumption(s) shall present a rebuttable presumption in whatever action the CCCSWA takes. Certain financial records and data prepared by Contractor, relating to the cost of providing services under this Agreement, may contain or constitute confidential trade secret information that is proprietary to Contractor. Contractor shall designate any such information as "Confidential" if and when it is inspected by CCCSWA or its agents.

In the event CCCSWA requests certain records or Contractor discontinues providing Recycling services to CCCSWA, Contractor shall provide all records requested by CCCSWA within thirty (30) days. Records shall be in chronological and organized form and readily and easily interpreted.

(5) **CERCLA Disposal Records.** CCCSWA views the ability to defend against Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and related litigation as a matter of great importance. For this reason, the CCCSWA regards the ability to prove where Residue resulting from the Processing of Recyclable Materials Delivered by CCCSWA Collector was taken for Disposal, as well as where it was not taken, to be matters of concern. Contractor shall maintain, retain and preserve records that can establish where such Residue was Disposed (and therefore establish where it was not). This provision shall survive the expiration or earlier termination of this Agreement. Contractor shall maintain these records for a minimum of ten (10) years beyond expiration or earlier termination of the Agreement, in an organized and indexed manner, and whether in physical (e.g. weigh tickets) and/or electronic form. CCCSWA however may elect to obtain such physical and electronic records at the expiration of the Agreement, or upon termination.

c. Report Formats and Schedule

Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed. Reports are intended to compile recorded data into useful forms of information that can be used to, among other things:

1. Evaluate the financial efficiency of operations; and
2. Evaluate past and expected progress towards achieving goals and objectives; and
3. Determine needs for adjustment to programs; and
4. Evaluate Contractor performance and complaints.

Contractor may propose report formats that are responsive to the objectives and audiences for each report. The format of each report shall be approved by the Executive Director.

Monthly reports shall be submitted within twenty (20) calendar days after the end of the report month. Annual reports shall be submitted by April 30th following the Contract year.

d. Report Submittal

All reports shall be submitted to:
Executive Director
Central Contra Costa Solid Waste Authority
1280 Civic Drive, Suite 210
Walnut Creek, CA 94596

e. Monthly Reports

(1) Tonnage of Recyclable Materials Accepted by jurisdiction of origin, Recyclable Materials Recovered by jurisdiction of origin; and

(2) Recyclable Materials sales statement based on a percentage allocation showing: kinds of material, the name of each buyer/user, date of sale/transaction, terms of sale/transaction, quantity purchased (in Tons), value per Ton, and net sales. Tonnages sold at different prices during month must be reported separately. Adjustments to previous month's sales (such as for contamination) shall be reported on the current statement as a reduction of sales and referenced to the previous month's statement, wherein the original sale was reported.

The sales numbers shall be reconciled with the daily tonnage and differences shall be justified. New information shall be included for report month along with cumulative sales for Contract Year; and

(3) Status of any applications for renewals of existing Permits, or any new Permits that may be required to continue Operations at the Facility; and

(4) Residue Tonnage Disposed supported by landfill weight tickets; and

(5) A copy of the complaint log for the previous month as required in Section 8.04(1)(1).

f. Annual Report

The Annual Report shall include the content of the monthly reports and provide summaries as follows:

(1) **Facility Performance.** Describe goals, milestones and accomplishments achieved during the Contract year. Describe problems encountered, actions taken and any recommendations to facilitate progress.

(2) **Summary Assessment.** Provide a summary assessment of the overall Facility performance from Contractor's perspective relative to financial and Operational status of program. The Operational status is to relate to how well the program is Operating for efficiency, economy and effectiveness relative to meeting all the goals and objectives of this Agreement. Provide recommendations and plans to improve. Highlight significant accomplishments and problems. Indicate problems and propose solutions related to coordination with CCCSWA Collector.

(3) **Financial Statements.** Include a supplemental combining schedule showing Contractor's results of Operations for the most recent Contract Year, including the specific revenues and expenses in connection with the Operations provided for in this Agreement. The financial statements, supplemental schedule, management letter and footnotes shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP) and shall be accompanied by a letter signed

by Contractor's chief financial officer and by a corporate officer certifying the accuracy of such statements, schedules and footnotes.

Upon request by the CCCSWA, the financial statements, supplemental schedule, management letter and footnotes shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP) and audited, in accordance with Generally Accepted Auditing Standards (GAAS) by a certified public accountant (CPA) licensed (in good standing) to practice public accounting in the State of California as determined by the State of California Department of Consumer Affairs Board of Accountancy. The CPA's opinion on Contractor's annual financial statements and supplemental schedule shall be unqualified, except as to uncertainties for which the ultimate outcome cannot be determined by the date of the CPA's opinion. The cost for the audits shall be borne by Contractor as a direct cost of service if the audit reveals a financial discrepancy unfavorable to CCCSWA that is material and substantially exceeds in amount the costs of the audit.

Contractor shall, in its agreement with the CPA performing its audit referred to above, have its CPA make available to CCCSWA (or CCCSWA's designated representative) such CPA's working papers related to the audit. The cost, if any, incurred by Contractor's CPA shall be included in the cost of the audit.

g. Other Reports. CCCSWA reserves the right to request Contractor to supply other reports at any time during the Term. In the event annual third-party costs associated with preparation of such additional reports requested by CCCSWA exceeds one thousand dollars (\$1,000), Contractor may apply for reimbursement under the Extraordinary Review provisions of Section 11.02(c).

h. Failure to Provide Reports. If Contractor fails to provide reports herein, Contractor shall pay liquidated damages in accordance with Exhibit 7.

8.09 CCCSWA Rights to Access Facility

CCCSWA and its designated representative(s) shall have the right, to enter, observe and inspect the Facility at any time during Facility Operations; conduct studies or surveys of the Facility; meet with the Facility manager or his or her representatives at any time; and meet with other employees upon request, which request shall not be unreasonably denied by Contractor, provided that CCCSWA and its representatives comply with Contractor's reasonable safety and security rules and shall not interfere with the work of the Contractor or its subcontractors. Upon CCCSWA request, Contractor shall make personnel available to accompany CCCSWA employees on inspections. Contractor shall ensure that its employees cooperate with CCCSWA and respond to CCCSWA's reasonable inquiries. Contractor shall make Operational and business records required to be kept pursuant to Section 8.08(b)3, available to CCCSWA or its agent during normal office hours upon CCCSWA request, and shall provide CCCSWA copies of such records at CCCSWA's request.

ARTICLE 9. DESIGNATED DISPOSAL FACILITY

9.01 Designated Disposal Facility

Commencing March 1, 2005 Contractor shall lawfully dispose of all Residue solid waste resulting from Processing Recyclable Materials Delivered from the CCCSWA Service Area to the Facility. The Contractor may designate any Disposal facility that has obtained all Permits and approvals necessary and is in compliance with Applicable Laws and regulations for solid waste Disposal. Throughout the Term of the Agreement, Contractor shall have the responsibility to monitor the regulatory compliance of the Designated Disposal Facility to insure that it remains in full regulatory compliance.

ARTICLE 10. COMPENSATION

10.01 General

Contractor's compensation provided for in this Article shall be the full, entire and complete compensation due to Contractor pursuant to this Agreement for all labor, equipment, material and supplies, taxes, insurance, bonds, overhead, transport, Recycling, Processing, Residue Disposal, profit and all other things necessary to perform the services required by this Agreement in the manner and at the time prescribed. Contractor's compensation shall be derived from the Contractor's sale of CCCSWA generated Recyclable Materials Delivered to Contractor's Facility. Contractor shall not look to the CCCSWA for payment for any sums under this Agreement other than as may be due pursuant to the provisions contained in Section 10.10, Section 10.11 and Article 11 (Extraordinary Review of Compensation). Contractor shall perform the responsibilities and duties described in this Agreement in consideration of the right to retain its share of the revenues obtained from a sale of the CCCSWA generated Recyclable Materials Delivered to Contractor's Facility, including all revenues derived from those materials lawfully obtained from the California Redemption Values (CRV) program for said materials. CCCSWA shall have no Obligations to reimburse Contractor for any losses that Contractor may incur due to fluxuations in Market prices.

CCCSWA shall use Reasonable Business Efforts to attempt to ensure that the minimum Tonnage of Recyclable Materials Delivered to the Facility will meet or exceed 28,000 Tons per Contract Year. However, Contractor shall not look to CCCSWA for payment of any additional sums for failure of CCCSWA to deliver a minimum of 28,000 Tons with the exception of the responsibility for CCCSWA to insure that an annual fixed costs payment in the amount of \$378,000 is provided to Contractor that will be proportionally allocated per Ton for the difference between 28,000 Tons and Delivered Tons. Stated differently, Contractor shall receive \$13.50 per Ton for each Ton below 28,000 Tons that is not delivered by CCCSWA Collector during any Contract Year.

CCCSWA shall be compensated by Contractor in accordance with the provisions herein for each Ton of Recyclable Materials Delivered to Contractor's Facility in an amount not less than \$32.59 per Ton for every Ton Accepted, Processed, Recovered and Marketed and shall additionally receive a material revenue share depending on the Recyclable Market sales, revenues and the potential for net revenues generated by CCCSWA and other Approved Users.

10.02 Per Ton Processing Fee

The Per Ton Processing Fee is \$63.75 for Recyclable Materials Delivered to Contractor's Facility by CCCSWA Collector.

10.03 Contractor Net Revenue Guarantee

Contractor guarantees CCCSWA a net revenue guarantee of \$32.59 per ton for Recyclable Material Delivered by CCCSWA Collector to Facility that is Accepted, Processed, Recovered, and Marketed by Contractor.

10.04 Material Revenue Share

If the average sale of CCCSWA generated Recyclable Material Delivered, Processed, Recovered and Marketed by the Contractor exceeds \$96.34 per Ton then CCCSWA receives a Material Revenue Share of 60% of the total sales price revenue between \$96.34 per Ton and \$130.00 per Ton in addition to the net revenue guarantee. If the average sale of CCCSWA generated Recyclable Material Delivered, Processed, Recovered and Marketed exceeds \$130.00 per Ton then CCCSWA receives a material revenue share of 50% of the total sales price above \$130.00 per Ton plus the material revenue share of 60% to the total sales price greater than \$96.34 per Ton and less than \$130.00 per Ton in addition to the net revenue guarantee.

10.05 CCCSWA Material Revenue Share for Other Approved Users

Contractor shall pay a material revenue share to CCCSWA of 25% of the net revenue for each Ton of Recyclable Materials generated outside CCCSWA by Approved Users that is Accepted and Processed, Recovered and Marketed by Contractor, which have not Delivered Recyclable Materials to the Contractor prior to Agreement's Effective Date.

10.06 Aggregate Ton Value Determination

In order to determine CCCSWA's material revenue share portion for the previous month, the Contractor will report to the CCCSWA 1) the total number of Tons Marketed of each Recyclable Material type and 2) all form of revenue received, earned or accrued of any form whatsoever for each Recyclable Material type Marketed. To determine the aggregate Ton value, the Contractor will divide the total amount of revenue received for the Marketing of the Recyclable Materials for the month by the total number of Recyclable Materials Tons Delivered for the month. Sales Price includes California Redemption Values.

10.07 Liquidated Damages

a. General. The liquidated damage payments for events in which Contractor fails to meet its Facility Operating Guarantee and other Obligations are presented in Exhibit 7.

b. Payment of Liquidated Damages. The Contractor shall submit payment to CCCSWA via wire transfer or by Contractor check for any liquidated damages assessed within ten (10) Working days of Notice from CCCSWA. If Contractor disputes any amount of liquidated damages pursuant hereto, it shall nevertheless pay the disputed amount under protest subject to the outcome of any appeal. If the Contractor is successful in its appeal or challenge of liquidated damages, CCCSWA shall refund the damages plus interest calculated using the most recent yield for the California Local Agency Investment Fund. The Parties shall handle the matter in accordance with the dispute resolution procedures in Article 15.

10.08 Contractor Remittance to CCCSWA

Contractor shall remit to CCCSWA on or before thirty (30) calendar days after the end of a report month via wire transfer or Contractor check 1) the per Ton net revenue guarantee multiplied by the Tons Delivered to the Facility by the CCCSWA Collector, and Accepted, Processed, Recovered and

Marketed by the Contractor, 2) the material revenue share as described in Section 10.04 multiplied by the Tons Delivered to the Facility by the CCCSWA Collector, and Accepted, Processed, Recovered and Marketed by the Contractor, and 3) the material revenue share from other Approved Users as described in Section 10.05 multiplied by the Tons Delivered to the Facility by the Approved User(s) Collector(s), and Accepted, Processed, Recovered and Marketed by the Contractor for the previous month.

The remittance shall be accompanied by a report itemizing the 1) number of Tons Delivered to the Facility by the CCCSWA Collector, and Accepted, Processed, Recovered and Marketed by the Contractor and at the sales price by material type to determine the aggregate Ton value and the material revenue share portion due CCCSWA and 2) the Tons Delivered to the Facility by other Approved User(s) Collector(s), and Accepted, Processed, Recovered and Marketed by the Contractor to determine CCCSWA's material revenue share portion from Recyclable Materials received from other Approved Users. The Contractor will also provide the actual amount of Residue Disposed that month and the amount of Recyclable Material Tonnage currently in inventory. Total Tons Marketed equals total Tons Delivered minus Residual Tons Disposed minus Recyclable Material Tonnage in inventory minus shrinkage.

In the event Contractor fails to pay CCCSWA in a timely manner, Contractor will be required to pay a late payment for each month the payment is due in the amount of two percent (2%) of the amount due.

10.09 Aggregate Ton Value Below \$96.34

If the Aggregate Ton Value in any month falls below \$96.34, the Contractor will still pay the CCCSWA the per Ton Contractor net revenue guarantee of \$32.59, and will establish a credit for the Contractor that is the difference between the aggregate Ton value that month and \$96.34. This credit will be deducted from CCCSWA's future revenue material share portion when the aggregate Ton value exceeds \$96.34 a month until the credit is eliminated.

If the Agreement ends with a credit due the Contractor, the credit will be voided and the CCCSWA will not owe the Contractor any monies.

10.10 CCCSWA Annual Tonnage Guarantee Falls Below 28,000

If the CCCSWA fails to deliver the Annual Tonnage Guarantee of 28,000 Tons by the end of the Contract Year, the supplemental compensation to Contractor for the underpayment of annual fixed cost which is \$378,000 annually proportionally allocated per Ton to the 28,000 Tons minus Delivered Tons Accepted, Processed, Recovered and Marketed will also be a credit due the Contractor and deducted from CCCSWA's future monthly revenue material share portion until credit is eliminated.

If the Agreement ends with a credit due the Contractor, this credit shall be payable to the Contractor.

10.11 Extended Facility Receiving Hours

In the event CCCSWA or its Collector require or request Contractor to extend Facility Receiving Hours on a recurring or significant basis, Contractor shall be compensated by CCCSWA or its Collector at a per-hour fee of \$175.00 per hour of extended receiving Operations.

10.12 Used Oil Drop Off

Contractor shall maintain and provide CCCSWA all cost and revenue records relating to the used oil drop off facility and services provided to the CCCSWA Collector, and provide records of such costs and revenues together with, and in the same manner as monthly and annual reports required under Article 8. These costs and revenues shall be taken into account in the Revenue Reconciliation provided for in Section 10.13 below. Contractor shall be reimbursed for net costs associated with this service.

10.13 Revenue Reconciliation Procedure

At the conclusion of any Contract Year (February 28 or 29) following receipt of Contractor's Annual Report (due April 30), the CCCSWA may choose to reconcile the Contractor's payments to the CCCSWA based on records retained, reports received, and results of its CCCSWA's own investigation pursuant to Article 8 and comparison of Contractor's revenue to sales prices reported by the Official Boards markets for the Bay Area for each type of Recyclable Material. If the reconciliation reveals that either CCCSWA or Contractor is due sums different than actually paid or received during that Contract Year, such sums shall be paid to the Party due such sums either upon demand or within the remainder of that Contract Year.

ARTICLE 11. EXTRAORDINARY REVIEW OF COMPENSATION

11.01 Definition

An Extraordinary Review is the review of a specified change in circumstances with relation to Facility Operations that Contractor or CCCSWA alleges materially impacts Contractor's Costs. This may be a change in Contractor's Obligations or a Change of Scope. An Extraordinary Review may result in an upward or downward adjustment of the \$63.75 per Ton Processing fee for Recyclable Materials or a change in the per Ton revenue guarantee, among other things. Either Party can initiate an Extraordinary Review.

11.02 Conditions for an Extraordinary Review

Other than as provided elsewhere in this Agreement, the following are the only conditions under which the Per Ton Processing Fee may be modified using processes identified in Section 11.04 as specified.

a. Change in Recyclable Material Type Collected. Significant increased or decreased Processing costs incurred by the Contractor due to CCCSWA change (addition or elimination) in type of Recyclable Materials CCCSWA directs its Collector to deliver to Contractor's Facility or material change in composition of materials delivered due to other factors other than a Change in Law.

b. Change in Approved Users, New Technologies, and Changes in Labor Needs. Significant increased or decreased Processing costs due to additions to the list of Approved Users, new technologies, or changes in labor needs. Changes in technology and labor needs shall be previously approved by CCCSWA and such approval shall not be unreasonably withheld.

c. Change in Contractor's Obligations. Significant increased or decreased Contractor costs that result from a specific change in Contractor's Obligations as directed by, or approved by CCCSWA, including but not limited to changes in Facility Receiving Hours, and Recovered Materials Processing requirements.

d. Change in Law. A Change in Law such that there is a material change in value of the Recyclable Materials sold or other requirements causing increased or decreased Contractor costs, excepting any Permit conditions or mitigation requirements imposed by the City of Benicia that are not contemplated on the date hereof.

e. Uncontrollable Circumstances. An Uncontrollable Circumstance, as defined in Section 13.09, provided that such Uncontrollable Circumstance results in a significant increase or decrease in Contractor's costs; provided that cases or costs arising from occurrences typically covered by broad form coverage first party insurance for the Facility premise shall not provide a basis for Extraordinary Review.

f. Labor Action by CCCSWA or other Approved Users Collectors.

11.03 Items Ineligible for an Extraordinary Review

Items that are not eligible for an Extraordinary Review include, but are not limited to:

- a. Variations in Recyclable Materials.** Variations or fluctuations in the weight, volume or composition of Recyclable Materials Delivered to the Facility unless such variation or fluctuation is caused by a change to Approved User(s) services as provided in Section 11.02(b), a Change in Law as provided in Section 11.02(d), or failure of CCCSWA to meet its obligations in Section 8.05(b).
- b. Labor Action.** Labor Actions by Contractor's employees, agents, and subcontractors.
- c. Errors and Omissions.** Errors and omissions on the part of the Contractor in preparing Contractor's Proposal or this Agreement.
- d. Contractor Error.** Equipment failure or failure to Accept Recyclable Materials due to Contractor's responsibilities for error(s) in planning, failure to maintain proper regulatory rights to operate, regulatory actions against Contractor that prohibit or curtail Facility Operations; underestimation of Facility Enhancement and Operating costs; other Operating problems; and/or problems related to Operations of the Contractor, its subcontractors, its vendors, or its agents.
- e. Contractor's Costs.** Costs incurred by the Contractor in fulfillment of Contractor's Obligations for fines, judgments, and settlements levied against Contractor by third parties.
- f. Losses Not Covered by Insurance.** Casualty losses or similar costs or expenses incurred by Contractor due to occurrences that Contractor cannot recover from any insurers or from another Party, including litigations costs arising from each occurrence.
- g. Change in Recycling Markets** not caused by a Change in Law.

11.04 Extraordinary Review Process

A request for an Extraordinary Review shall be conducted as provided in this Section. Contractor is obligated to meet requirements of this Section whether process is CCCSWA-initiated or Contractor-initiated.

- a. Notice of Extraordinary Review.** The Party initiating an Extraordinary Review shall Notice the other Party, citing the applicable provisions of this Article and providing a complete written summary of the reason for the Extraordinary Review, and its alleged impact on Contractor's per Ton Processing Fees.
- b. Extraordinary Review Request Format.** For any request submitted under this Section either Party shall:

(1) Describe the circumstance warranting an Extraordinary Review.

(2) Describe the impact of the circumstance under Extraordinary Review on Contractor's Per Ton Processing Fee, Contractor's Obligations, or the need for a Change in Scope.

(3) If it's a change in Contractor's Obligations or a Change of Scope if applicable, identifying physical changes to the Facility and Site, changes in Operating methods, identify the capital and/or operating cost of modifications and labor needs, and implementation schedule. The Contractor shall include detailed documentation supporting its request, including cost substantiation required with respect to costs. Contractor covenants that it will not propose a cost in excess of the fair market price for such change in Contractor's Obligations or Change of Scope, whether it implements such changes itself or through a subcontractor.

(4) The requesting Party may provide draft language changes to the provisions of this Agreement, as Contractor deems appropriate and necessary to affect any change in Contractor's per Ton Processing Fee, CCCSWA's material revenue share percentage, Contractor's Obligations, and/or Change in Scope.

c. CCCSWA's Review. If Contractor is requesting Party, within ninety (90) Working Days of receiving the Contractor's proposal, CCCSWA shall review and comment on, and approve or disapprove such Extraordinary Review request. CCCSWA and Contractor may mutually agree to extend the time periods for review due to complexity of the specific Extraordinary Review request, the time needed for review or approval, or for other reasonable reasons.

d. Contractor Cooperation, Regardless which Party Initiates Review. CCCSWA may request from the Contractor Operating and business records reasonably required to verify the reasonableness and accuracy of the impacts associated with an Extraordinary Review. Contractor shall fully cooperate with CCCSWA's request and provide CCCSWA and its agent(s) copies of or access to Contractor's records and audited financials if requested at Contractor's costs.

e. Approval of Extraordinary Review. Upon CCCSWA approval or determination, CCCSWA will issue a Notice approving the Extraordinary Review and documenting any change to the Per Ton Processing Costs or revenue sharing formula, an approved change in Contractor's Obligations, or an approved Change in Scope. The Notice, with appropriate language, will become an amendment to the Agreement. No adjustment in Contractor's per Ton Processing fee, CCCSWA's material revenue share percentage change in Contractor's Obligations, or Change in Scope shall become effective absent such CCCSWA approval or determination.

If CCCSWA has requested the Extraordinary Review, the Parties agree to meet and confer on the issue and work in good faith to come to agreement on appropriate adjustments to the compensation provisions set forth in Article 10. Contractor's agreement to an equitable adjustment shall not be unreasonably withheld.

f. Resolution of Disputes. Any dispute regarding compliance with this Section will be resolved according to provisions of Article 15.

g. Withdrawal of Notice for Extraordinary Review. The Party that initiated the Extraordinary Review may withdraw its Notice and its request for Extraordinary Review at any time.

11.05 Contractor's Implementation of Change in Scope

Upon approval of a Change in Scope pursuant to Section 11.02, the Contractor shall diligently perform such work in accordance with the approved work plan, schedule, and cost proposal. If CCCSWA has agreed to pay for such work, the Contractor shall submit invoices for such implementation in accordance with the schedule contained in the proposal and shall provide full documentation of costs incurred.

11.06 Insurance and Other Third Party Payments

To the extent that any costs resulting from an Extraordinary Review are incurred by CCCSWA and/or Contractor pursuant to this Article, and can be recovered by the Contractor or CCCSWA from any insurance provider or from another third party, the Contractor and CCCSWA shall exercise with due diligence such rights as either Party may have to effect such recovery. Either Party shall give prompt Notice to the other Party of the receipt of any such recovery which shall be applied as appropriate to the restoration or reconstruction of the Facility after the date of this Agreement. Contractor shall provide CCCSWA with copies of all documentation, and shall afford CCCSWA a reasonable opportunity to participate in all conferences, negotiations and litigation, regarding insurance claims or other recoveries that materially affect CCCSWA's interest under this Agreement. All applicable insurance recoveries shall be applied to reducing the cost of restoration or reconstruction.

ARTICLE 12. INSURANCE, INDEMNITY, BONDS, FURTHER ASSURANCES

12.01 Insurance

Contractor shall secure and maintain in full force and effect during the Term adequate insurance that shall be no less than the types and amounts of insurance coverage listed in Exhibit 3. Contractor shall be responsible for payment of all premiums for its policies and shall pay such deductibles upon occurrence of an insured loss under their respective policies. Insurers must provide the CCCSWA and Contractor with sixty (60) calendar days' Notice of any cancellation, change or other modification and name the CCCSWA as an additional insured, with exception of cancellation due to non-payment of premium for which insurers must provide thirty (30) calendar days Notice. Contractor shall supply a certificate of insurance and additional insured endorsement to the CCCSWA showing compliance with this Article and Exhibit 3 or at the CCCSWA's request; Contractor shall supply a certified copy of the insurance policies to the CCCSWA. The terms and obligations of this section shall survive termination of this Agreement.

12.02 Indemnification and Defense

The Contractor shall defend, with counsel reasonably acceptable to CCCSWA, indemnify, and hold harmless the CCCSWA, its officers, agents, employees and volunteers and the Approved User(s), as their respective interests may appear, from and against any and all liabilities, attorneys' fees and expenses at trial and on appeal, including damages, claims, demands, judgments, losses, costs, expenses and actions, arising out of, or resulting from any act, error or omission of Contractor, its officers, employees, agents or subcontractors in connection with the performance of this Agreement, (excepting only the gross negligence or willful misconduct of the CCCSWA) and which may cause, but is not limited to, the following:

(1) personal injuries including, but not limited to, wrongful death and property damage of any kind, nature or sort resulting from Facility Operations; and

(2) penalties, fines, and charges arising from Contractor's violation of Applicable Law(s) in connection with Facility Operations; and

(3) any condition of the Facility relating to the presence of Hazardous Waste, Household Hazardous Waste, petroleum or petroleum products from anytime through the Term and subsequent migration off-Site or on-Site remediation thereof; and

(4) any allegation of infringement, violation or conversion of any patent, licenses, proprietary right, trade secret or other similar interest, in connection with real or personal property on the Site or Facility Operations; and

(5) any claims or liability related to vector-caused damages or illness, biohazard, damage to the environment or health of the community in the vicinity of the Facility; and

(6) any claims or other liabilities directly or indirectly related to Facility Operations; and

(7) any claims or other liabilities directly or indirectly related to the provisions of the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC 9601 et seq., during or subsequent the period in which this Agreement is in effect; and

(8) any claims that may be made against CCCSWA based on any contention by any of Contractor's employees or by any third party, including any State or Federal agency and employees making workers compensation claims, that an employer-employee relationship or a substitute therefore exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of Contractor's Obligations; and

(9) for damages in connection with any claims made by, or payments made to, purchasers or users of Recovered Materials.

If there is an event that may result in potential litigation, damage, or liability, Contractor agrees to immediately Notify the CCCSWA in order for the CCCSWA to retain the ability to participate in the defense.

The terms and obligations of this Section shall survive termination of this Agreement.

12.03 Hazardous Substances Indemnification

The Contractor shall defend with counsel reasonably Acceptable to the CCCSWA, indemnify, protect and hold harmless the CCCSWA, its officers, officials, employees, agents, assigns and any successor or successors to the CCCSWA's interest from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages), injuries, response mediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, attorney's fees for the adverse party and expenses (including but not limited to attorneys' and expert witness fees and costs incurred in connection with defending against any of the forgoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, the CCCSWA or its officers, officials, employees, agents, assigns, or contractors arising from or attributable to willful or negligent acts, errors, omissions including but not limited to any repair, cleanup, disposal or detoxification, or preparation and implementation of any removal, remedial, response, or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance, Hazardous Wastes, or Household Hazardous Waste at the Facility pursuant to this Agreement. In the event that there are uninsured costs arising from a release of Hazardous Wastes as described in this Section which are not due to the failure by the Contractor to comply with its Hazardous Waste identification and treatment procedures, negligence, or willful misconduct of Contractor

The terms and obligations of this Section shall survive termination of this Agreement.

12.04 Financial Guaranty Agreement and Performance Assurances

All of the terms and obligations of the Financial Guaranty and Performance Assurances shall survive termination of this Agreement, if such termination is due to Contractor default.

ARTICLE 13. BREACHES AND DEFAULTS

13.01 Breaches

a. Definition of Contractor Breaches. A breach is a material failure to perform any of Contractor's Obligations in accordance with the provisions of this Agreement. In addition, the following events shall constitute a breach by the Contractor:

(1) **Seizure or Attachment of Equipment.** Any equipment owned by Contractor essential in Facility Operations is lawfully seized, attached or levied upon resulting in Contractor's failure to meet Contractor's Obligations.

(2) **Failure to Fulfill Contractor Obligations.** Contractor fails to meet any of Contractor's Obligations; provided, however, that Contractor shall not be in breach where the failure to meet Contractor's Obligations is due to an act or omission of Contractor that caused damage or destruction of all or part of the Facility, provided all of the following conditions are met:

(i) Contractor shall certify in writing to CCCSWA that insurance proceeds or other funds are available to repair or reconstruct the Facility, and CCCSWA to its reasonable satisfaction is in agreement with such certification.

(ii) Contractor shall diligently pursue such repair or reconstruction.

(iii) Contractor shall pay compensatory or liquidated damages pursuant to Section 13.01(f).

(iv) Contractor shall again be able to meet all Contractor Obligations within a reasonable time but in no event longer than two weeks and Contractor has made arrangements for the Processing of the Recyclable Materials at an Alternative Processing Site. CCCSWA can assist in this process.

(3) **Labor, Fiscal or Legal Difficulties.** Contractor is:

(i) the subject of any Labor Action (including work stoppage or slowdown, sick-out, picketing, lock-out or other concerted job action) to the extent such Labor Action causes a breach of Contractor's Obligations;

(ii) fails to regularly pay its bills, as they become due, including non-payment of bills for over sixty (60) calendar days; or

(iii) the subject of a civil or criminal judgment or order entered by a Federal, State, regional or local agency for violation of an environmental or tax law, for which any uninsured portion of the judgment is in excess of two hundred fifty thousand dollars (\$250,000), and the CCCSWA believes in good faith that Contractor's ability to timely and fully perform Contractor's Obligations has thereby been placed in substantial jeopardy.

(4) **Misrepresentation or False Warranty.** Any material written representation, disclosure, assurance, or warranty made to the CCCSWA by the Contractor in connection with, or as an

inducement to entering into or performing this Agreement or any future amendment to this Agreement, is a condition to the effectiveness of the Agreement, that proves to be false or misleading in any material respect as of the time the representation, disclosure, assurance, or warranty is made, whether or not any such representation or disclosure is contained in, or referenced in, the Agreement.

(5) Bankruptcy, Insolvency, Liquidation

(i) Voluntary Proceeding. Contractor or Guarantor files a voluntary claim for debt relief under any applicable bankruptcy, insolvency, debtor relief or other similar law now or hereafter in effect, or shall consent to the appointment of or taking of possession by a receiver, liquidator, assignee, trustee, custodian, administrator (or similar official) of Contractor or Guarantor for any part of Contractor's or Guarantor's operating assets or any substantial part of Contractor's or Guarantor's property, or shall make any general assignment for the benefit of Contractor's or Guarantor's creditors, or shall take any action in furtherance of any of the foregoing; provided that Contractor may propose to CCCSWA that CCCSWA substitute Guarantor as provided in Exhibit 8, in which event the CCCSWA may, at its sole discretion, effect such substitution, in which event it shall not terminate this Agreement in accordance with this paragraph.

(ii) Involuntary Proceeding. With respect to Contractor, a court having jurisdiction, without Contractor's consent or where Contractor fails to oppose the proceeding: (a) enters a decree or order for relief in respect of the Agreement, in any involuntary case brought under any bankruptcy, insolvency, debtor relief or similar law, now or hereinafter in effect, or (b) any such court enters a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Contractor, or for any part of Contractor's operating equipment or assets, or (c) orders the winding up or liquidation of the affairs of the Contractor.

(6) Failure to Maintain Financial Guarantees and Performance Assurance. The Contractor fails to maintain the financial guarantee or performance assurance requirement required under this Agreement.

(7) Failure to Notice CCCSWA. The Contractor fails to Notice the CCCSWA in a timely manner of any receipt of Notice of violation or official communication from any regulatory body having jurisdiction over the Contractor's Obligation under this Agreement that significantly affects the Contractor's ability to perform Contractor's Obligations.

(8) Regulatory Violation. The Contractor violates any regulatory obligation, orders, or filings of any regulatory body having jurisdiction over the Contractor relative to this Agreement in such a manner as to materially interfere with Contractor's present or future ability to perform Contractor's Obligations, provided the Contractor may contest any such orders, or filings by appropriate proceedings conducted in good faith, in which case no breach or default of this Agreement shall be deemed to have occurred.

(9) Failure to Meet Payment or Reporting Requirements. The Contractor fails to make any payment required under this Agreement to CCCSWA, or Federal, State, regional, and local entity or refuses to provide CCCSWA with required information, reports, and/or records in a timely manner as provided for in the Agreement.

b. Definition of Breaches by CCCSWA. A breach is a material failure to perform any of CCCSWA's Obligations in accordance with the provisions of this Agreement. The following shall constitute events of breach by the CCCSWA; however, CCCSWA breaches shall not be limited to:

(1) **Material Failure of Representations and Warranties.** Material failure of the CCCSWA with respect to its representations and warranties described in Section 2.02.

(2) **Material Failure to Deliver Materials.** Material failure of CCCSWA to deliver Recyclable Materials pursuant to Section 8.05(b).

(3) **Failure to Make Required Payments to Contractor.** Material failure of CCCSWA to make any payments due Contractor under this Agreement within a commercially reasonable time.

c. Additional Assurances from Both Parties. The CCCSWA may, at its option and in addition to all other remedies it may have, demand from Contractor reasonable assurances of timely and full performance hereunder. If Collector fails or refuses to provide such reasonable assurances by the date required by the CCCSWA such failure or refusal shall constitute a Contractor default.

If Contractor believes in good faith that CCCSWA's ability to timely and fully perform CCCSWA's Obligation has thereby been placed in substantial jeopardy, the Contractor may, at its option and in addition to all other remedies it may have, demand for CCCSWA reasonable assurances of timely and full performance hereunder. If CCCSWA fails or refuses to provide such reasonable assurances by the date required by the CCCSWA such failure or refusal shall constitute a CCCSWA default.

d. Notice of Breach. Either Party shall promptly Notice the other Party regarding the occurrence of a breach as soon as such breach becomes known to the Noticing Party. Such Notice shall be given verbally followed immediately by written Notice.

e. Cure of Breach. CCCSWA and Contractor shall begin cure of any breach as soon as possible after it becomes aware of its breach. Upon giving or receiving verbal Notice of a breach, CCCSWA or Contractor shall proceed to cure such breach as follows:

(1) Immediately, if the breach is such that in the determination of either the Contractor or the CCCSWA, the health, welfare or safety of the public is endangered thereby, unless immediate cure is impossible in which event the Contractor shall notify the CCCSWA and the provisions of Section 13.03 shall apply; or

(2) Within thirty (30) calendar days of giving or receiving Notice of the breach; provided that if the nature of the breach is such that it will reasonably require more than thirty (30) calendar days to cure, CCCSWA or Contractor shall not be in default so long as CCCSWA or Contractor promptly commences to cure its breach, secures written agreement from the other Party to extend the thirty (30) calendar day cure period, and provides the other Party, no less than weekly, written status of progress in curing such breach, and diligently proceeds to complete same.

(3) If Commencement of Facilities Operations does not occur on March 1, 2005 due to any failure of Contractor to have facility fully ready to receive a minimum of 28,000 Tons per Contract Year of CCCSWA Delivered Recyclable Materials, Contractor shall be in breach pursuant to the

terms of this Article, unless excused pursuant to Section 13.09. However, notwithstanding the general terms of this Article, Contractor shall have until the expiration of any extensions granted pursuant to Section 7.12(b) to cure said breach, provided Contractor provides monthly Notice to CCCSWA as to progress toward the Facility being ready. Beginning March 1, 2005, Contractor shall be responsible for any additional costs incurred by CCCSWA due to the inability of Contractor to Commence Facilities Operations by that date.

(4) If CCCSWA is in breach due to Failure to Deliver 28,000 tons of Recyclable Materials annually, CCCSWA may cure breach in accordance with Section 10.10.

f. Remedy of Breach, Specified Monetary Damages. Upon delivery of Notice thereof to Contractor, the CCCSWA may exercise any one or more of the following remedies, or the remedies provided in this Section to which it may be entitled, according to proof, and including but not limited to:

(1) **Compensatory Damages.** Any applicable damages to the CCCSWA or the CCCSWA's Recycling Collection Contractor(s) directly resulting from any breach including but not limited to the following:

(i) Incremental Direct Haul Costs: The incrementally greater costs for direct haul of any Recyclable Material to an alternative Processing facility as compared to the CCCSWA's then-current direct haul costs to the Facility.

(ii) Incremental Facility Operations Costs: The incrementally greater costs of replacing one or more aspects of Facility Operations, including, but not limited to Acceptance, Transfer, Recovery, Processing, Diversion, Marketing, transport of Recovered Materials to Market, and procuring and maintaining insurance.

(iii) Incremental Disposal Costs: The incrementally greater costs for Disposal of any Residue at a Disposal Facility other than the Designated Disposal Facility, as compared to the then-current Disposal fee at the Designated Disposal Facility.

(iv) Administrative Costs: Any documented administrative costs incurred by the CCCSWA including, but not limited to, CCCSWA staff time, legal, and consultant expenses.

(2) **Liquidated Damages.** Exhibit 7 contains specific circumstances that constitute a breach of contract, with an associated payment to be paid by Contractor to CCCSWA. The purpose of the payments contained in Exhibit 7 is to provide a clear and expeditious means for remedying the specified breaches occurring during Facility Operations, without incurring the time and cost necessary to determine proof of actual damage. The breaches contained in Exhibit 7 are not intended to be inclusive of all events of breach, but rather are circumstances for which a specific payment has been assessed with the agreement of the Parties. Therefore, the Parties agree that the liquidated damages specified in Exhibit 7 constitute a reasonable estimate of the monetary damages incurred in each instance, considering all of the circumstances existing on the Effective Date, including the relationship of the payments to the range of harm that reasonably could be anticipated. In signing this Agreement, each Party specifically confirms the accuracy of this Section 13.01(f)(2) and of Exhibit 7, and the fact that each Party had ample opportunity to consult with legal counsel and to obtain an explanation of these provisions. In the event CCCSWA seeks liquidated damages for Contractor's failure to meet one or more of Contractor's Obligations, CCCSWA shall not be entitled to additional compensatory damages for same Contractor failure. CCCSWA recognizes that

any breach has material cost implications for the Contractor even if no liquidated damage payment is required. CCCSWA reserves its rights to pursue all other remedies available herein for breaches other than compensatory damages where liquidated damages have been assessed and paid.

g. Remedy of Breach, Other CCCSWA Remedies. In addition to the monetary damages specified in Section 13.01 (f) CCCSWA shall be entitled to all available equitable remedies, including specific performance and injunctive relief.

h. Remedy of Breach, Contractor Remedies. In addition to compensatory damages, Contractor shall be entitled to all available equitable remedies, including specific performance and injunctive relief.

i. Order of Priority for Collection of Monetary Damages. Upon delivery of Notice to Contractor as provided in 13.01(d), Contractor shall cure such breach as provided in 13.01(e) including, but not limited to, the payment of any liquidated damages pursuant to the procedures described in Section 10.07 and any compensatory damages CCCSWA determines is necessary to cure said breach pursuant to 13.01(f). In the event the Contractor fails to pay the liquidated and compensatory damages necessary for CCCSWA to secure adequate and full relief, CCCSWA shall initially seek such relief by drawing upon the securities and other assets held in escrow pursuant to the terms of the Performance Assurance as provided in Exhibit 8. In the event CCCSWA is unable to secure adequate and full relief under the terms of the Performance Assurance and the assets described therein, CCCSWA may subsequently seek additional monetary damages from the assets of the Contractor. Such relief may include, but not be limited to, the appointment of a receiver and the sale of assets including, but not limited to, sale of the Facility. In the event CCCSWA is unable to secure adequate and full relief under the terms of the Performance Assurance or from the assets of the Contractor, CCCSWA may subsequently seek additional monetary damages by drawing upon the personal assets pursuant to the terms of the Financial Guaranty Agreement.

Notwithstanding the aforementioned, in the event Contractor commences proceedings for dissolution, bankruptcy, insolvency, or the liquidation of assets, CCCSWA may immediately seek monetary damages by drawing upon the personal assets described in the Financial Guaranty Agreement. In addition, in the event an inspection of records pursuant to Section 8.08 reveals that the Contractor does not, in the sole opinion of the CCCSWA, have the financial capability to cure any existing breach for which Notice shall have been given, CCCSWA may immediately seek monetary damages by drawing upon the personal assets pursuant to the terms of the Financial Guaranty Agreement.

Nothing in this subsection (i) shall prohibit CCCSWA from seeking other remedies in addition to monetary damages as described in Section 13.01(g).

13.02 Default

a. Events of Contractor Default. Each of the following shall constitute an event of default by Contractor.

(1) **Uncured Breach of Agreement.** Contractor fails to cure any breach as specified in 13.01(e).

(2) **Repeated Pattern of Breaches.** Contractor has, in the sole but reasonable determination of the CCCSWA, incurred a pattern of successive breaches, or related events of breach, that cumulatively indicate Contractor unwillingness or inability to timely, fully, and consistently perform all Contractor Obligations throughout the Term.

(3) **Failure to Remedy Effects of Uncontrollable Circumstance.** The Contractor fails to remedy effects of an Uncontrollable Circumstance in accordance with Section 13.09.

b. Notice of Default. Contractor shall be in default from the date of receipt of a Notice from the CCCSWA identifying such default.

c. CCCSWA Remedies in the Event of Contractor Default. Upon failure to cure a Contractor Default pursuant to Section 13.02(a), the CCCSWA shall, in addition to its right to collect monetary damages as specified in Section 13.01(f), have the following rights:

(1) **Waive Default.** To, at its sole discretion, waive the Contractor default.

(2) **Termination.** Terminate the Agreement in accordance with Article 14, provided that no termination shall be effective until the CCCSWA shall have given written notice to Contractor of its decision to terminate the Agreement.

(3) **All Other Available Remedies.** In addition to, or in lieu of termination, to exercise all of its remedies in accordance with this Article and any other remedies at law and in equity, to which the CCCSWA shall be entitled, according to proof.

(4) **Damages Survive.** If the Contractor owes any damages upon CCCSWA's termination of the Agreement, Contractor's liability under this Section 13.02 shall survive termination.

(5) **Other CCCSWA Rights.** In the event the CCCSWA does not exercise its right to terminate, the CCCSWA shall have the right to:

(i) Seek performance cures by the Contractor; or

(ii) Make a claim on any insurance policy or policies.

d. Events of CCCSWA Default. The following shall constitute an event of default by CCCSWA.

(1) **Uncured Breach of Agreement.** CCCSWA fails to cure any breach as specified in Section 13.01(b).

e. Notice of Default. CCCSWA shall be in default from the date of receipt of a Notice from the Contractor identifying such default.

f. Contractor Remedies in the Event of CCCSWA Default. Upon failure to cure a CCCSWA default pursuant to Section 13.02(e), the Contractor shall, in addition to its right to collect monetary damages, have the following rights:

(1) **Waive Default.** To, at its sole discretion, waive the CCCSWA default.

(2) **Termination.** Terminate the Agreement in accordance with Article 14, provided that no termination shall be effective until the Contractor shall have given written notice to CCCSWA of its decision to terminate the Agreement.

(3) **All Other Available Remedies.** In addition to, or in lieu of termination, to exercise all of its remedies in accordance with this Article and any other remedies at law and in equity, to which the Contractor shall be entitled, according to proof.

(4) **Damages Survive.** If the CCCSWA owes any damages upon Contractor's termination of the Agreement, CCCSWA's liability under this Section 13.02 shall survive termination.

13.03 Substitute Services

a. CCCSWA Rights. In addition to exercising any or all remedies specified in Section 13.01, Section 13.02, or Exhibit 7, or, with regard to an event of Contractor breach or default, respectively, or due to an Uncontrollable Circumstance as defined in Section 13.09, the CCCSWA may at its sole discretion take any of the actions specified below with regard to provision of substitute services. CCCSWA has no obligation to secure or to continue to secure substitute services. If the Contractor is, for any reason whatsoever including Uncontrollable Circumstances, and in the reasonable determination of the CCCSWA, unable to Accept Recyclable Materials in substantial conformance with the Contractor's Obligations, CCCSWA may exercise its rights as specified in this Section.

b. Notice. CCCSWA may give Contractor oral Notice followed within twenty-four (24) hours by written Notice, that CCCSWA is exercising its right to secure substitute services. Such oral Notice shall be immediately effective. CCCSWA's immediate right to continue to secure substitute services under this Section, exercised due to a specific instance(s) of breach, default, or Uncontrollable Circumstance, shall cease within five (5) Working Days of receipt of Notice from Contractor that the latter is ready, willing, and able to resume timely and full performance of Contractor's Obligations.

c. CCCSWA Contracting for Substitute Service. The CCCSWA may make its own arrangements to provide substitute services for the CCCSWA and an Approved User(s) substantially and reasonably similar to the services the Contractor is Obligated to provide hereunder and using a facility other than the Contractor's Facility. Any costs, expenses, or damages incurred by the CCCSWA in providing or contracting for such substitute services as should have been part of the performance of Contractor's Obligations that are a result of Contractor's breach or Contractor Default shall be paid by Contractor to the CCCSWA. The Contractor shall participate in the process to find alternate services as a means to reduce the net cost effect of the alternate service.

d. Contractor Contracting for Substitute Service. CCCSWA may require Contractor to secure substitute services for the CCCSWA and Approved User(s) substantially similar to the services it is obligated to provide hereunder and using a Facility other than the Contractor Facility satisfactory to the CCCSWA. Any costs, expenses, or damages incurred by the CCCSWA by Contractor securing such substitute services as should have been part of the performance of Contractor's Obligations that are a result of Contractor's breach or Contractor Default shall be paid by Contractor to the CCCSWA. During the period in which Contractor provides and pays for substitute service, Contractor will use best efforts to continue to pay the CCCSWA the Contractor net revenue

guarantee. This obligation of Contractor to provide substitute service shall not apply if Contractor's inability is due to Uncontrollable Circumstances as set forth in Section 13.09.

13.04 CCCSWA Use of Facility

a. CCCSWA Rights. In the event of Contractor Default which results in Contractor failure to Operate the Facility, Process and Market Recyclable Materials and Transfer and Dispose Residue, CCCSWA may, upon request, lease the Facility, and the Contractor shall lease to the CCCSWA the Facility and all of the Contractor's equipment required for the Operation for such time as the Contractor can again resume timely and full performance of Contractor's Obligations hereunder, or the Facility is sold or the Agreement is terminated pursuant to Article 14 hereof and a new operator put in place. Contractor agrees to negotiate in good faith to determine lease provisions that, at maximum, compensate the Contractor for its fixed costs of maintaining the Facility in an Operating condition. CCCSWA may designate a third party ("**Replacement Operator**") to operate the Facility during the period of any such lease.

b. Contractor Obligations. In the event CCCSWA decides to select a Replacement Operator pursuant to this Section, Contractor shall provide the following to CCCSWA or Replacement Operator in a timely manner to permit the continued Operation of the Facility:

(1) A nonexclusive sublicense to any patents, trademarks, copyrights and trade secrets and "shop rights" as necessary for, and limited to, the Operation of the Facility; and

(2) Any proprietary components needed for continuing the Operation of the Facility; and

(3) Initial training of personnel as may be reasonably necessary to enable the assignee to continue with Operation of the Facility; and

(4) Provide non-technical and technical design, the Contractor's Operations and Maintenance Manual, construction and Operation information, whether or not proprietary, including technical specifications and as-built plans of the Facility and assign or provide any other license or consent which is necessary for the Operation, maintenance and repair of the Facility.

13.05 Dispute Resolution Procedures

Neither Party shall have any right to invoke or avail itself of any remedy set forth in this Article, including the instituting of any court proceedings, without first complying with the dispute resolution procedures set forth in Article 15.

13.06 Waiver

A waiver by the CCCSWA of one breach or default by Contractor shall not be deemed to be waiver of any other breach or default by Contractor, including ones with respect to the same Obligations hereunder, and including new incidents of the same breach or default. The subsequent Acceptance by the CCCSWA of any damages or other money paid by Contractor hereunder shall not be deemed to be a waiver by the CCCSWA of any pre-existing or concurrent breach, or default by Contractor.

13.07 CCCSWA Determination of Remedy or Cure of Breach or Default

Upon request of either Party, an event of breach or default shall be considered remedied or cured upon signature by both Parties of a written agreement specifying the event and stating that remedy and/or cure of such event has been completed.

13.08 Criminal Activity of Contractor

Contractor shall be considered to have performed criminal activity should Contractor or any of its officers or directors be "found guilty" of felonious conduct relating to Contractor's Obligations under this Agreement, or other felonious conduct by the Contractor, its officers, directors, or management or fiscal employees (where "management employee" means an employee with general responsibility, direction and control over the Contractor's activities and "fiscal employee" means an employee with direct responsibility and control duties relating to financial matters or its Guarantor, its officers or directors, arising under this Agreement or relating to the Operation of the Facility. The term "found guilty" shall be deemed to include any judicial determination that Contractor or any of Contractor's officers, directors or employees is guilty, and any admission of guilt by Contractor, or any of Contractor's officers, directors or employees including, but not limited to, the pleas of "guilty," "nolo contendere," "no contest," or "guilty to a lesser felony" entered as part of any plea bargain. Such felonious conduct includes, but is not limited to: (i) price fixing, (ii) illegal transport or disposal of Hazardous Waste, Household Hazardous Waste, or toxic materials, (iii) bribery of public officials, or (iv) fraud or tampering. In the event Contractor conducted criminal activity, the CCCSWA reserves the right to exercise one or more of the remedies specified below in Sections 13.08(a), 13.08(b), or 13.08(c). Such action shall be taken after Contractor has been given Notice and an opportunity to present evidence in mitigation. If the CCCSWA does not terminate this Agreement, Contractor shall dismiss or remove officers, directors or employees found guilty of felonious behavior and take all action necessary and appropriate to remedy any breach of Contractor's Obligations. The CCCSWA shall have the right to one or more of the following remedies:

a. Unilateral Termination. To unilaterally terminate this Agreement in accordance with Article 14 in which event the parties shall have no further obligations to each other. However, if the Contractor is in breach or default of any of its Obligations hereunder other than the criminal activity of Contractor described in this Section 13.08, CCCSWA shall be entitled to pursue any other remedies it may have pursuant to Sections 13.01 and 13.02 hereof for breach of such other Obligation, notwithstanding the termination of this Agreement pursuant to this Subsection (a).

b. Exercise Remedies. If the CCCSWA does not terminate this Agreement, Contractor shall dismiss or remove officers, directors or employees found guilty of felonious behavior and take all action necessary and appropriate to remedy and breach of Contractor's Obligations pursuant to Section 13.01. Contractor's failure to cure any breach in accordance with Section 13.01 shall be a Contractor default under Section 13.02 and CCCSWA shall have the right to all other remedies specified therein including, without limitation, the right to terminate the Agreement pursuant to Article 14.

c. Impose Sanctions. If the CCCSWA does not terminate this Agreement, the CCCSWA may impose sanctions, which may include financial sanctions or any other condition deemed appropriate. However, the CCCSWA may not impose sanctions with which, despite Contractor's use of

Reasonable Business Efforts, Contractor cannot comply or which would likely cause a material adverse affect on the Contractor's ability to comply with its Obligations hereunder or pursuant to any financing documents. Any dispute as to whether a proposed sanction violates the provisions of this Section 13.08(c) shall be resolved in accordance with Dispute Resolution, Article 15.

13.09 Uncontrollable Circumstances

a. "Uncontrollable Circumstance(s)". "Uncontrollable Circumstance(s)" means any act, event, or condition outside either Party's control and not the result of willful or negligent action or inaction on the part of such Party, whether affecting the Facility or either Party, which materially and adversely affects the ability of either Party to perform any of its Obligations hereunder, including:

(1) The failure of any appropriate Federal, State, or local public agency or private utility having operational jurisdiction in the area in which the Facility is located, to provide and maintain utilities, services, water, sewer or power transmission lines to the Facility which are required for Facility Operation; and

(2) A Change in Law other than Changes in Law excluded in Section 11.02(d); and

(3) The suspension or interruption of Facility Operations as a result of any release, spill, contamination, migration or presence of any Hazardous Waste, petroleum and petroleum products or as a result of any release, spill, contamination of toxic materials where Contractor is not potentially liable for the release, spill or contamination, nor a potentially responsible party.

(4) A Force Majeure event that temporarily or permanently interrupts Facility Operations; and

(5) Labor Actions against suppliers, Approved Users or other entities over which Contractor has no control and result in a material adverse effect on Contractor's Operations.

b. Exclusions. The following are excluded from Uncontrollable Circumstances, without limitation, unless caused by an Uncontrollable Circumstance listed above:

(1) Adverse changes in the financial condition of either Party or any Change in Law with respect to any taxes based on or measured by net income, or any unincorporated business, payroll, franchise or employment taxes;

(2) The consequences of errors in Facility Operation on the part of Contractor, its employees, agents, subcontractor or affiliates, including errors in plans and specifications that should reasonably have been identified by Contractor or failure to comply with the Operations and Maintenance Manual; and

(3) The failure of Contractor to secure patents, technical licenses, trademarks, and the like necessary for Facility Operation; and

(4) The lack of fitness for use, or the failure to comply with the plans and specifications of the Facility description of any materials, equipment or parts constituting any portion of the Facility; and

(5) Labor Actions of Contractor's employees or subcontractors including, but not limited to, strikes, lockouts, and industrial disturbances; and

c. Performance Excused. Neither Party shall be in breach of its Obligations hereunder in the event, and for so long as, it is impossible or extremely impracticable for it to perform such Obligations due to an Uncontrollable Circumstance if such Party exerted Reasonable Business Efforts to prevent such Uncontrollable Circumstance, and such Party expeditiously takes all actions within its control to end, or to ameliorate the effects of such Uncontrollable Circumstance as soon as possible.

Contractor shall, as specified in Article 12, carry and keep in force such insurance as is needed to mitigate the financial effects of Uncontrollable Circumstances to which the Facility or Contractor may be subject. All insurance proceeds available from policies covering any Uncontrollable Circumstance act or event shall be used to mitigate any damages caused by insurable events.

d. Notice. The Party claiming excuse from performance of its Obligations based on an Uncontrollable Circumstance shall Notify the other Party as soon as is reasonably possible, but in no event later than 3 working days after the occurrence of the event constituting the Uncontrollable Circumstance. The Notice shall include a description of the event, the nature of the Obligations for which the Party claiming Uncontrollable Circumstance seeks excuse from performance, the expected duration of the inability to perform, proposed mitigation measures, and, in the event of an Uncontrollable Circumstance involving damage or destruction of the Facility, the estimated cost and time necessary to repair or rebuild the Facility. In the case of the latter, if such cost and time are not known at the time of the initial Notice of the event, that information shall be submitted as soon as possible thereafter in an additional Notice.

e. Events not Causing Facility Damage or Destruction. If an Uncontrollable Circumstance does not cause damage or destruction of the Facility, and Contractor is unable to fulfill Contractor's Obligations, the Party claiming excuse shall diligently exercise Reasonable Business Efforts to develop and pursue a course of action designed to allow it to again perform all of its Obligations as soon as is reasonably practicable, and provided it does so, shall be given such additional time as is reasonably necessary until it is able to resume performance of its Obligations hereunder. If the Contractor, despite its Reasonable Business Efforts, shall be unable to resume performance of Contractor's Obligations within the three (3) month period following the date of the Notice provided in subsection (d) above, then the CCCSWA may terminate this Agreement and the Parties shall thereafter have no further Obligations to the other.

f. Events Causing Facility Damage or Destruction. If an Uncontrollable Circumstance causes damage or destruction of the Facility, and the cost to repair or rebuild is expected to be funded entirely from the proceeds of insurance policies maintained by the Contractor then the Contractor shall as soon as is practicable, commence the repair or reconstruction activities and shall be excused from those of its Obligations hereunder which it cannot perform due to the Uncontrollable Circumstance for a period of up to one (1) year from the date of the additional Notice described in subsection d above.

Notwithstanding any other provision of this Section, in the event that the Contractor cannot complete repair or reconstruction so as to again assume performance of its Obligations hereunder within one (1) year from the date of additional Notice described in subsection (d) above, then the

CCCSWA may, upon written Notice to Contractor, terminate this Agreement in which event the Parties shall have no further Obligations to each other.

ARTICLE 14. TERMINATION

14.01 CCCSWA's Right to Suspend or Terminate

a. Suspension. CCCSWA shall have the right to suspend this Agreement, in whole in or in part, upon the occurrence of a Contractor default under Section 13.02 regarding a failure to perform Contractor's Obligations and such occurrence that endangers public health, welfare or safety; provided such suspension is for no longer than forty-five (45) calendar days, during which period the Contractor shall have the opportunity to demonstrate to the reasonable satisfaction of the CCCSWA the Contractor can once again fully perform Contractor Obligations in which case CCCSWA may waive such default and Contractor shall continue to perform Contractor's Obligations. If CCCSWA is not so satisfied, it may exercise any or all remedies, including those under Section 14.01(b). In the event of Contractor suspension, CCCSWA shall have the right to use the Facility and designate a Replacement Operator to perform some or all Facility Operations as provided in Section 13.04.

b. Termination for Reasons Other than Convenience. In addition to any other remedy available to the CCCSWA in law or under the terms of this Agreement, CCCSWA shall have the right to terminate this Agreement if one or more of the following events occur:

(1) **Contractor Default.** Occurrence of a Contractor default, which is not cured within the time frame specified in Section 13.02(a).

(2) **Criminal Activity of Contractor.** Contractor is found guilty of felonious conduct in accordance with Section 13.08.

(3) **Facility Damage or Destruction.** In the event the Facility is totally destroyed or is materially damaged and Contractor fails to reconstruct or repair the Facility, in accordance with Section 13.09(f).

CCCSWA shall give Contractor Notice of termination. Such Notice shall be effective thirty (30) calendar days thereafter; provided, that such Notice shall be effective immediately if the public health or welfare is threatened.

c. Termination for Convenience. The CCCSWA may terminate this Agreement for convenience at any time provided that the effective date of termination occurs no earlier than the expiration of the Base Term; provided that the CCCSWA Notices Contractor one (1) year prior to effective date of such termination.

14.02 Contractor's Responsibilities and Obligations Upon Termination or Contract Expiration

a. Outstanding Damages. Contractor shall pay CCCSWA any compensatory damages or liquidated damages, in accordance with Sections 13.01 and 13.02, accrued and payable during the then current calendar year or portion thereof which would have otherwise become payable. Contractor's liability for such payments shall survive the termination of this Agreement.

b. Credit Due Contractor. If Agreement ends with credit due Contractor, provisions in Section 10.09 will apply. CCCSWA payments due to Contractor per Sections 10.10 and 10.12 will be paid within 30 days of Agreement termination.

c. Records. Upon CCCSWA request, Contractor shall promptly provide CCCSWA with any or all records kept in accordance with Article 8. Contractor's Obligation to provide such records shall survive the termination of this Agreement.

14.03 CCCSWA Option to Purchase Site and Facility

a. Purchase in the event of Termination for Contractor Default. In the event of Contractor Default, the CCCSWA has the right, at its sole discretion, but not the obligation, to acquire Ownership of the Facility from Contractor or Guarantor subject to good faith negotiations between Contractor and CCCSWA.

b. Purchase in the event of Assignment. In the event Contractor proposes to transfer Ownership of Facility to a proposed assignee, the CCCSWA shall have the right of first refusal at any time during the Term, but not the obligation, to acquire the Facility at the purchase price offered by proposed assignee, provided the CCCSWA enters a formal request to purchase within 60 days of notice of request to assign from the Contractor. The CCCSWA will then have an additional 60 days to close the purchase.

c. Contractor Vacation of Site and Facility Upon CCCSWA Purchase. Upon CCCSWA acquisition of Site and Facility, Contractor shall:

(1) Vacate the Site and Facility and deliver possession of Site and Facility, and Commingled Processing equipment at the CCCSWA's request to CCCSWA or to Replacement Operator, as directed by CCCSWA.

(2) Transfer to the CCCSWA or at the CCCSWA's request to the Replacement Operator, the rights to use any and all patents, licenses, trade secrets, or other intellectual property necessary for Facility Operation.

(3) Transfer to the CCCSWA or at the CCCSWA's request to the Replacement Operator, any and all maintenance and supply contracts and Recovered Materials sales contracts which are specific to the Facility.

(4) Deliver possession of any proprietary components needed for Facility Operation to the CCCSWA or at the CCCSWA's request to the Replacement Operator.

(5) Provide thirty (30) days of training of such personnel designated by the CCCSWA as may reasonably be necessary to enable the CCCSWA or Replacement Operator to continue with Facility Operation.

(6) Provide the CCCSWA or at the CCCSWA's request to the Replacement Operator, non-technical and technical design, construction and Operation information, whether or not proprietary, including the Operations and Maintenance Manual, technical specifications, and as-built plans of the Facility and assign or provide any other license or consent which is necessary for the Operation, maintenance and repair of the Site and Facility.

ARTICLE 15. DISPUTE RESOLUTION

15.01 Dispute Resolution Procedures

In the event that any dispute arises between the Parties concerning the interpretation, enforcement or any other matter related to or in connection with this Agreement, the Parties shall comply with the procedures in this Article in an attempt to resolve such dispute and shall exert Reasonable Business Efforts to comply with their respective Obligations pending resolution.

The dispute resolution procedure may be initiated by either Party upon providing Notice to the other specifying the matter in dispute. Upon receipt of such Notice, both Parties shall, within five (5) Working Days of receipt of such Notice, meet and confer in good faith to resolve such dispute. Each Party shall, in good faith and in writing, promptly provide to the other Party any and all information and documentation reasonably related to the dispute requested by the other Party. If Parties are unable to satisfactorily resolve the dispute within thirty (30) calendar days then the CCCSWA and Contractor agree that such disputes shall be submitted to mediation.

15.02 Continue Performance

Except for an event of Contractor default, in the event of any dispute arising under this Agreement, the CCCSWA and Contractor shall continue performance of their respective Obligations under this Agreement and shall attempt to resolve such dispute in a cooperative manner, including but not limited to negotiating in good faith.

15.03 Informal Negotiations and Mediation

Any dispute which arises under this Agreement which does not give rise to the need for exigent action or immediate termination, shall initially be subject to a period of good faith informal negotiations, which shall not extend beyond thirty (30) days unless the Parties otherwise mutually agree in writing to an extension of the informal negotiation. The dispute shall be considered to have arisen on the date when a Party receives written Notification from the other, specifically referencing this dispute resolution Section.

If the Parties cannot resolve a dispute by informal negotiations within 30 days, either Party may require that the dispute proceed to mediation. Such a Party requesting mediation shall send written Notice to the other Party via facsimile or overnight delivery, of its request to proceed with mediation. If either party is dissatisfied with the mediation process after sixty (60) days, such Party may request the matter be appealed to the CCCSWA Board of Directors pursuant to Section 15.04 below.

15.04 Notice, Hearing and Appeal to CCCSWA Board

If either Party seeks to take further action after completion of the negotiation and mediation process set forth in section 15.02 above, it shall have the right to appeal the disputed issue to the CCCSWA Board of Directors. This appeal shall be made in writing and served on the other Party. Thereafter, CCCSWA shall notify Contractor of the time and date when the CCCSWA Board of Directors will review the disputed issues. The Contractor shall present its position and all relevant facts after staff

has made its presentation. Contactor shall be notified in writing within thirty (30) Working Days of the CCCSWA Board of Directors ruling. For purposes of exhausting administrative remedies, the CCCSWA Board of Directors ruling shall be final. However, nothing herein should be construed to limit the ability of CCCSWA to pursue other rights and remedies provided for under Articles 13 and 14, prior to such hearing, where exigencies require immediate or expedited actions including potential termination. After exhausting administrative remedies, Contractor can pursue all other rights and remedies allowed by law.

ARTICLE 16. ASSIGNMENT

16.01 Definition

For purposes of this Article, "assignment" shall include, but not be limited to (i) a sale, exchange or other transfer of substantially all of the Contractor's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of fifty (50) percent or more of the outstanding common stock of the Contractor; (iii) any reorganization, consolidation, merger recapitalization, stock issuance or re-issuance, voting trust, pooling Agreement, escrow arrangement, liquidation or other transaction to which the Contractor or any of its shareholders is a party which results in a change of Ownership or control of fifty (50) percent or more of the value or voting rights in the stock of the Contractor; and (iv) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of Ownership. If the Contractor is not a corporation, an assignment shall also include, among other things, any transfer or reorganization that has an effect similar to the situations described in foregoing sentence for corporations. For purposes of this Article, the term "proposed assignee" shall refer to the proposed transferee(s) or other successor(s) in interest pursuant to the assignment. If the Contractor is a subsidiary of another corporation or business entity, any "assignment," as defined above, by the parent company or corporation shall be considered an assignment by the Contractor. Change in Ownership of Contractor's assets or stocks, which occur for interfamilial planning purposes only and do not involve a change in the management of the Facility shall not be considered an assignment for the purposes of Article 16.

16.02 CCCSWA Assignment

The CCCSWA may assign its rights and responsibilities under this Agreement to any other governmental entity or agency as long as any such proposed assignee under this Section shall (i) have the legal authority and financial capacity sufficient to assume and perform all of the CCCSWA's Obligations, and (ii) shall agree in writing to do so.

16.03 Contractor Assignment

a. Limitations. The Contractor acknowledges that this Agreement involves rendering a vital service to the CCCSWA's residents, and that the CCCSWA has relied upon the Contractor's representation of its experience and financial resources in qualifying the Contractor to perform the services under this Agreement. Except as provided in this Article, the Contractor shall not assign its rights or delegate, subcontract, or otherwise transfer its Obligations hereunder to any other Person without the prior consent of the CCCSWA. Any such assignment made without the consent of the CCCSWA shall be void and subject to liquidated damages. Under no circumstances shall the CCCSWA be required to consider any proposed assignment if the Contractor is in default at any time during the period of consideration. Assignment requests will not be unreasonably withheld.

b. Determination. The Contractor shall submit its request for CCCSWA consent to the CCCSWA together with documentation and information concerning the financial capability and Recyclables Materials Processing management experience of the proposed assignee. Any such proposed assignee under this Section shall have the legal authority sufficient to assume and perform all of Contractor's Obligations, and shall agree in writing to do so.

In making its determination to consent to the assignment the CCCSWA may require and consider, and the Contractor shall cause to be provided such items as the following:

(1) audited financial statement of the proposed assignee for the immediately preceding five (5) operating years, indicating that the proposed assignee's financial status is sufficient to perform all Contractor's Obligations or other financial reports and assurances acceptable to the CCCSWA; and

(2) satisfactory proof that the proposed assignee has at sufficient years of Recyclable Materials Processing experience on a scale equal to or exceeding the scale of Operations conducted by the Contractor; and

(3) satisfactory proof that in the last five (5) years, the proposed assignee has not suffered any citation or other censure from any Federal, State or local agency having jurisdiction over its business activities and operations due to any Significant failure to comply with State, Federal or local law, which citation or censure has not been timely cured to the satisfaction of such agency, or is not now in the process of a cure; and if it has suffered any citation or other censure, that the assignee has provided the CCCSWA with a complete list thereof;

(4) evidence the proposed assignee conducts its Operations in accordance with Standard Industry Practices and in full compliance with all Federal, State and local laws regulating the materials Recycling industry.

(5) letters of credit, lines of credit, or other financial assurances confirming the assignee's financial ability to perform the Agreement, and if in the opinion of the CCCSWA that the assignee's or its Guarantor's financial ability is not adequate, CCCSWA may require a performance assurance in amounts acceptable to the CCCSWA; and

(6) any other information reasonably required by the CCCSWA to ensure the proposed assignee can fulfill the terms hereof, including the payment of damages, in a timely, safe and effective manner.

(7) a Financial Guaranty Agreement has been provided by the proposed assignee that is satisfactory to the CCCSWA and is binding and enforceable upon the Guarantor.

c. Application and Transfer Fee. Any application for a transfer of this Agreement shall be governed by the following conditions:

(1) Any application for a transfer shall be made in a manner prescribed by the CCCSWA representative. The application shall include a transfer fee in an amount to be set by resolution of the CCCSWA Board to cover the cost of all direct and indirect administrative expenses including consultants and attorneys, necessary to adequately analyze the application and to reimburse the CCCSWA for all direct and indirect expenses.

(2) The Contractor shall reimburse the CCCSWA for any and all additional costs related to the assignment requested and not covered by the transfer fee, including attorney's fees and investigation costs related to investigation of the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment. Bills

shall be supported with evidence of the expense or cost incurred. The Contractor shall be responsible for ensuring the payment of such bills within thirty (30) calendar days of receipt.

d. Transition. If the CCCSWA consents to an assignment, at the point of transition the Contractor shall cooperate with the CCCSWA and subsequent Contractor(s) or subcontractor(s) to assist in an orderly transition which shall include the Contractor providing all operating information requested by proposed Assignee including scale house records, vehicle tare weights, and financial information.

ARTICLE 17. OTHER PROVISIONS

17.01 Notices

All demands, orders, requests, proposals, comments, acknowledgments, approvals, consents, certifications and other communications made hereunder shall be in writing and shall either be personally delivered to a representative of the Parties at the address below or be deposited in the United States mail, first class postage prepaid (certified mail, return receipt requested), addressed as follows:

If to CCCSWA:

CCCSWA Executive Director
1280 Civic Drive St 210
Walnut Creek, California 94596
Telephone: (925) 906-1801
Fax: (925) 906-1805

If to Contractor:

Pacific Rim Recycling
3690 Sprig Drive
Benicia, California 94510
Attn: Steve Moore
Telephone: (707) 746-6067
Fax: (707) 745-8273

The address to which communications may be delivered may be changed from time to time by a Notice given in accordance with this Section. Any Notice or other communication hereunder shall be effective as of the date received, or if earlier, as of the date upon which such Notice or communication is first sent by email and confirmed by the receiving Party, facsimile transmission, or other means of rapid or instantaneous communication, and simultaneously confirmed by mail in the manner specified above.

17.02 Authorized Representatives

a. CCCSWA. For purposes of this Agreement, the CCCSWA's authorized representative shall be the CCCSWA Executive Director or her/his designee, who shall have the authority to make Operational decisions and financial decisions in accordance with Applicable Law and CCCSWA policy with respect to this Agreement which are binding on the CCCSWA.

b. Contractor. For purposes of this Agreement, Contractor's authorized representative shall be Mr. Steve Moore who has the authority to make decisions in accordance with Applicable Law and Contractor's articles of incorporation, bylaws and policy.

17.03 Conflicting Provisions

In the event the provisions of the Articles herein conflict with those of the Exhibits hereto, the Articles shall prevail.

17.04 Governing Law

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State.

17.05 Amendments

The Parties may change, modify, supplement, or amend this Agreement only upon mutual written agreement duly authorized and executed by both Parties.

17.06 Venue

The venue for any legal proceedings initiated by Contractor related to this Agreement shall be exclusively the County of Contra Costa or, in case of federal jurisdiction, Federal District Court, Northern Division.

ARTICLE 18. SEVERABILITY

If any term or provision of this Agreement shall be found to be illegal or unenforceable, then, notwithstanding, this Agreement shall remain in full force and effect and such term or provision shall be deemed stricken.

ARTICLE 19. ENTIRE AGREEMENT

This Agreement contains the entire Agreement between the Parties with respect to the transactions contemplated hereby. All Exhibits 1 through 8 are hereby incorporated into this Agreement by reference. This Agreement shall completely and fully supersede all prior understandings and agreements between the Parties with respect to such transactions. However, nothing in this paragraph shall supercede or diminish the representations and warranties as contained in Article 2.

[Remainder of page intentionally left blank. Text continues on next page.]

IN WITNESS WHEREOF, the PARTIES hereto have Executed this Agreement on the date first above written.

CCCSWA Chair (CCCSWA)

CCCSWA Chair

Contractor (signature)

Steven A. Moore, President/CEO

Date _____

Date _____

ATTEST:

Attach Notarized Corporate
Resolutions

CCCSWA Secretary to the Board, Sheri Johanson

Date _____

APPROVED AS TO FORM:

CCCSWA Attorney, Kenton L. Alm

Date _____

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